



2025:AHC:134968

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 23546 of 2024

Arshad Jamal

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Saroj Kumar Dubey
Counsel for Opposite Party(s)	:	G.A.

Court No. - 77

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard learned counsel for applicant and learned A.G.A. for State.
2. The instant application has been preferred for quashing the entire proceedings of Case No.6274 of 2020 (State vs. Arshad Jamal) arising out of Case Crime No.582 of 2019, under section 505 I.P.C. and section 67 of I.T. Act, P.S. Kotwali, District- Mau, pending in the court of learned Chief Judicial Magistrate, Mau, including charge-sheet dated 13.06.2020 as well as cognizance/summoning order dated 28.08.2020.
3. Brief facts of the instant case is that initially an F.I.R. has been lodged by opposite party no.2 against the applicant being Case Crime No.582 of 2019 with an allegation that applicant, who was Ex-Chairman of his area, was creating hindrance in two groups by uploading and posting communal message on account of which the society may be disturbed, wherein after conducting detail investigation by concerned Investigating Officer submitted charge-sheet against the applicant on dated 13.06.2020 in pursuance to section 505 I.P.C. and section 67 of I.T. Act, whereupon learned court concerned took cognizance of offence vide order dated 28.08.2020 and summoned the applicant, which impugned the present application.
4. Learned counsel for applicant submitted that applicant is a respectable person of his society and on account of some alleged communal post, he has been implicated in this case; although the message on which basis the F.I.R. has been registered against the applicant has not been culminated into any unhappening incident inside the country/society. He has also relied upon Annexure No.6 to the affidavit, wherein in the report submitted by Cyber

Crime Cell, it is clear refusal to provide any authentic evidence with regard to alleged post.

5. Learned counsel for applicant further relied upon the judgement rendered by Hon'ble Apex Court in case of **Imran Pratapgadhi vs. State of Gujarat and Another, decided on 28.03.2025 in Criminal Appeal No.1545 of 2025**, wherein paras- 32, 38, 39, 40, 41 and 42 has been specifically pressed and reproduced herein below:-

32. At this stage, we cannot resist the temptation of quoting what Bose and Puranik, JJ., authored as the Judges of the erstwhile Nagpur High Court. In the case of Bhagwati Charan Shukla v. Provincial Government, C.P. & Berar³, in paragraph 67, it is held thus:

"67. Viewing the impugned article in that light we are of opinion, as a matter of fact, that it is not seditious because its professed aim is to obtain a change of Government through the ballot box and not to incite people to a disobedience of the laws of Government. Some extravagance of language there is, and there is the usual crude emotional appeal which is the stock in trade of the demagogue, as well as a blundering and ineffective attempt to ape the poets. But that is all. However, it is not enough to find that the writer is not guilty of sedition because we are concerned with Section 4 of the Press (Emergency Powers) Act which travels wider than S. 124 A. We have therefore further to see whether these words tend directly or indirectly to incite to sedition, or, in the words of the Ordinance, whether they are intended or are likely to produce that effect. We say deliberately whether the words are likely to incite to sedition because, as the Federal Court points out, the formula of words used in S. 4, as also in the Ordinance, is precisely the formula used in S. 124 A, 1946 SCC OnLine MP 5 therefore to the extent of the formula the two things are the same. The only difference is that under the Press Act we have to consider not only whether there is sedition in fact but also whether the words tend, directly or indirectly, to excite to sedition and whether they are intended or are likely to produce that effect. We pause to observe that here, as in the case of reasonable doubt in criminal cases, and as in the case of putting in fear of hurt in a matter of assault, we must use 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. Using those standards we hold as a fact that the effects apprehended by the Crown and required by the section are not likely to be caused by this article, nor do the words used, viewed in their proper setting, tend to cause that effect. The paper is in English. It has a limited circulation. It is read by those who know and understand English. It is a party paper and is read mainly by persons who are politically minded. They are aware of contemporary political thought and occurrences. They realise as well as any one else that neither His Excellency the Governor nor his advisers went round shooting and killing persons. They know that these acts were done by the troops and

by the police. They know that there was a demand for an impartial investigation and a judicial enquiry. They know that the demand was refused and they know that the whole complaint, so far as Government is concerned, lies there. They are therefore no more likely to attribute to Government any greater responsibility than Mr. Jamnadas Mehta and other members of the Central Assembly did. They are as much aware as the writer that the appeal is for a constitutional change of Government by constitutional means. They were not, in our opinion, likely to interpret it otherwise. Therefore, in our judgment, the article does not tend, directly or indirectly to sedition, nor is it likely to produce that result. In our view, the applications should be allowed and the orders of forfeiture set aside. The costs should, we think, in each case be paid by the Crown." (emphasis added)

38. *Free expression of thoughts and views by individuals or groups of individuals is an integral part of a healthy, civilised society. Without freedom of expression of thoughts and views, it is impossible to lead a dignified life guaranteed by Article 21 of the Constitution. In a healthy democracy, the views, opinions or thoughts expressed by an individual or group of individuals must be countered by expressing another point of view. Even if a large number of persons dislike the views expressed by another, the right of the person to express the views must be respected and protected. Literature including poetry, dramas, films, stage shows, satire and art, make the life of human beings more meaningful. The Courts are duty-bound to uphold and enforce fundamental rights guaranteed under the Constitution of India. Sometimes, we, the Judges, may not like spoken or written words. But, still, it is our duty to uphold the fundamental right under Article 19 (1)(a). We Judges are also under an obligation to uphold the Constitution and respect its ideals. If the police or executive fail to honour and protect the fundamental 1992 Supp (1) SCC 335 rights guaranteed under Article 19 (1)(a) of the Constitution, it is the duty of the Courts to step in and protect the fundamental rights. There is no other institution which can uphold the fundamental rights of the citizens.*

39. *Courts, particularly the constitutional Courts, must be at the forefront to zealously protect the fundamental rights of the citizens. It is the bounden duty of the Courts to ensure that the Constitution and the ideals of the Constitution are not trampled upon. Endeavour of the courts should always be to protect and promote the fundamental rights, including the freedom of speech and expression, which is one of the most cherished rights a citizen can have in a liberal constitutional democracy. The Courts must not be seen to regulate or stifle the freedom of speech and expression. As a matter of fact, the Courts must remain ever vigilant to thwart any attempt to undermine the Constitution and the constitutional values, including the freedom of speech and expression.*

40. *Before we part with this judgment, we must refer to two important judgments. More than two decades ago, a Full Bench of the Bombay High Court was examining an order of the Government of Maharashtra directing forfeiture of all copies,*

*manuscripts etc. of a play called Mee Nathuram Godse Boltoy in Anand Chintamani Dighe and anr. Vs. State of Maharashtra and ors.*⁹. While quashing the order of forfeiture passed by the Government of Maharashtra, Justice Dr. D.Y. Chandrachud (as he then was) speaking for the Bench observed that Government in that particular case seemed to have acted in the wake of the criticism voiced against the play and of the sense of outrage of those who believed that the play unfairly criticized the father of the nation. He highlighted the eternal values on which the Constitution of a democracy is founded. Acceptance of the freedom to express a view which may not accord with the mainstream are cardinal values. A society wedded to the rule of law cannot trample upon the rights of those who assert views which may be regarded as unpopular or contrary to the views shared by the majority. Right of the playwright, of the artist, writer and of the poet will be reduced to husk if the freedom to portray a message – whether it be in canvas, prose or verse – is to depend upon the popular perception of the acceptability of that message. Popular perceptions cannot override constitutional values such as the guarantee of freedom. Relevant portion of the aforesaid judgment is extracted hereunder with approval:

"19. But, it is important to realise that there are eternal values on which the Constitution of a democracy is founded.

Tolerance of a diversity of view points and the acceptance of the freedom to express of those whose thinking may not accord with the mainstream are cardinal values which lie at the very foundation of a democratic form of Government. A society wedded to the rule of law, cannot trample upon the rights of those who assert views which may be regarded as unpopular or contrary to the views shared by a majority. The law does not have to accept the views which have been expressed by the petitioner in the play in order to respect the right of the petitioner as a playwright to express those views. Respect for and tolerance of a diversity of viewpoints is what ultimately sustains a democratic society and Government. The right of the playwright, of the artist, writer and of the poet will be reduced to husk if the freedom to portray a message - whether it be in canvas, prose or verse - is to depend upon the popular perception of the acceptability of that message. Popular perceptions, however strong cannot override values which the constitution embodies as guarantees of freedom in what was always intended to be a free society." (emphasis added)

41. *In Shreya Singhal v. Union of India*¹⁰, 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:*

(i) *Sub-Section (3) of Section 173 of the BNSS makes a significant departure from Section 154 of CrPC. It provides that when information relating to the commission of a cognizable offence which is made punishable for 3 years or more but less than 7 years is received by an officer-in-charge of a police station, with the prior permission of a superior officer as mentioned therein, the police officer is empowered to conduct a preliminary inquiry to ascertain whether there exists a prima facie case for 10 (2015) SCC 1 proceeding in the matter. However, under Section 154 of the CrPC, as held in the case of Lalita Kumari², only a limited preliminary inquiry is permissible to ascertain whether the information received discloses a cognizable offence. Moreover, a preliminary inquiry can be made under the CrPC only if the information does not disclose the commission of a cognizable offence but indicates the necessity for an inquiry. Sub-Section (3) of Section 173 of the BNSS is an exception to sub-Section (1) of Section 173. In the category of cases covered by sub-Section (3), a police officer is empowered to make a preliminary inquiry to ascertain whether a prima facie case is made out for proceeding in the matter even if the information received discloses commission of any cognizable offence.*

(ii) *Under sub-Section (3) of Section 173 of the BNSS, after holding a preliminary inquiry, if the officer comes to a conclusion that a prima facie case exists to proceed, he should immediately register an FIR and proceed to investigate. But, if he is of the view that a prima facie case is not made out to proceed, he should immediately inform the first informant/complainant so that he can avail a remedy under sub-Section (4) of Section 173.*

(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.

(vii) There is no absolute rule that when the investigation is at a nascent stage, the High Court cannot exercise its jurisdiction to quash an offence by exercising its jurisdiction under Article 226 of the Constitution of India or under Section 482 of the CrPC equivalent to Section 528 of the BNSS. When the High Court, in the given case, finds that no offence was made out on the face of it, to prevent abuse of the process of law, it can always interfere even though the investigation is at the nascent stage. It all depends on the facts and circumstances of each case as well as the nature of the offence. There is no such blanket rule putting an embargo on the powers of the High Court to quash FIR only on the ground that the investigation was at a nascent stage.

(viii) Free expression of thoughts and views by individuals or group of individuals is an integral part of a healthy civilised society. Without freedom of expression of thoughts and views, it is impossible to lead a dignified life guaranteed by Article 21 of the Constitution. In a healthy democracy, the views, opinions or thoughts expressed by

an individual or group of individuals must be countered by expressing another point of view. Even if a large number of

persons dislike the views expressed by another, the right of the person to express the views must be respected and protected. Literature including poetry, dramas, films, stage shows including stand-up comedy, satire and art, make the lives of human beings more meaningful. The Courts are duty-bound to uphold and enforce fundamental rights guaranteed under the Constitution of India. Sometimes, we, the Judges, may not like spoken or written words. But, still, it is our duty to uphold the fundamental right under Article 19 (1)(a). We Judges are under an obligation to uphold the Constitution and respect its ideals. If the police or executive fail to honour and protect the fundamental rights guaranteed under Article 19 (1)(a) of the Constitution, it is the duty of the Courts to step in and protect the fundamental rights. There is no other institution which can uphold the fundamental rights of the citizens.

(ix) 75 years into our republic, we cannot be seen to be so shaky on our fundamentals that mere recital of a poem or for that matter, any form of art or entertainment, such as, stand-up comedy, can be alleged to lead to animosity or hatred amongst different communities. Subscribing to such a view would stifle all legitimate expressions of view in the public domain which is so fundamental to a free society.

6. Per contra, learned A.G.A. vehemently opposed the prayer as made through this application and rebutted the stand taken up by learned counsel for applicant by way of submitting that the act committed by applicant, who is Ex-Chairman of Nagar Palika Parishad, Mau, has caused disturbance and create hindrance between two groups, which is against the social peace and the same cannot be ignored only in absence of any authentic cyber cell report. It is further submitted that the pleadings have already been exchanged between the parties, and through the counter affidavit preferred, it is apparent that apart from the present case, applicant has criminal history of three more cases, which have not been explained by him through the rejoinder affidavit, nor at the time of arguments raised.

7. It is also submitted that the arguments whatsoever has been raised by learned counsel for applicant is amenable before learned trial court, which is specifically on the basis of statements so recorded by prosecution witnesses and the material evidences, which has been collected during the course of investigation and as such prima-facie offence has been made out against the applicant.

8. After hearing rival submissions extended by learned counsel for the parties and by bare perusal of records, it is crystal clear that the act

committed by applicant is against a peaceful society and as such the proceedings initiated against the applicant with regard to above allegation cannot be interfered at least at this stage and as such the instant application lacks merit.

9. The instant application stands **dismissed** accordingly.

August 6, 2025
Saif

(Saurabh Srivastava,J.)