



2024:DHC:9849



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 17th December, 2024**

+ CRL.M.C. 7336/2023
DR. RATAN LAL

.....Petitioner

Through: Mr. Aditya Kumar Choudhary, Mr.
Sandeep Pandey, Mr. Aditya Anand
Singh and Mr. Anurag Yadav,
Advocates

versus

STATE GOVT. OF NCT OF DELHI & ANR.Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for
the State
Mr. Shiwal Bhalla, Respondent No.2
in person

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS") [earlier Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC")] has been filed on behalf of the petitioner seeking quashing of the FIR No.50/2022, registered at Police Station North Cyber Crime, Maurice Nagar, Delhi, for the offences punishable under Sections 153A and 295A of the Indian Penal Code, 1960 (hereinafter "IPC").

2. The brief facts that led to the filing of the present petition are as follows:

a) The petitioner is an Assistant Professor of History at Hindu College,



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University of Delhi, with over two decades of teaching experience. On 14th May, 2022, the petitioner made a tweet *via* his Twitter handle @ratanlal72 on Twitter (now known as 'X') and made a post on his Facebook account regarding the presence of the 'Shiva Linga' like structure found in the Gyanvapi Mosque in Varanasi, Uttar Pradesh. The said tweet/post reads as ***“Yadi yeh Shiv Ling hai to Lagta hai shayad Shiv ji ka bhi khatna kar diya gaya tha”***.

- b) Based on the aforesaid tweet/post, the complainant namely Mr. Shiwal Bhalla filed a complaint which led to the registration of FIR No.50/2022, dated 18th May, 2022 against the petitioner herein, under Sections 153A and 295A of the Indian Penal Code, 1860 at PS Cyber Police Station, North, Maurice Nagar, Delhi.
- c) The petitioner was arrested in relation to the aforesaid FIR on 20th May, 2022 and was granted regular bail by the Court concerned vide order dated 21st May, 2022.
- d) In the meanwhile, the petitioner applied for visa for the United Kingdom, however, received an email from the British High Commission, New Delhi that verification is required from the police. Ultimately, the petitioner's visa was rejected. Moreover, it is stated that the on 7th July, 2023, the petitioner's promotion as Professor was also kept pending by the Principal stating the reason that the petitioner is an accused in the impugned FIR.
- e) Being aggrieved by the aforesaid, the petitioner has filed instant petition seeking quashing.



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3. Learned counsel appearing on behalf of the petitioner submitted that the impugned FIR is liable to be quashed as no further investigation related to the instant case has been initiated by the concerned investigating agency. Further, no charge sheet has been submitted before the learned Trial Court till date even though the petitioner has cooperated with the police during the investigation throughout.

4. It is submitted that the post in question is regarding the “Shiva Linga” which was unearthed from the Gyanwapi Mosque at Varanasi, Uttar Pradesh and the contents made in the tweet and the Facebook post were made by the petitioner with all the sense of responsibility as a historian.

5. It is further submitted that while making the post on Twitter as well as on Facebook, the petitioner had no intention to hurt the religious sentiments of any person or group of persons rather the same was made by the petitioner as an expression of thought in view of the other tweets and images which were already on various social media platforms.

6. Learned counsel for the petitioner submitted that on a plain reading of the FIR, no case is made out against the petitioner under Sections 153A and 295A of the IPC as after the said tweet and post on Twitter and Facebook respectively, neither any unrest happened in the society nor the harmony of the society was disturbed which are the essential ingredients to constitute an offence under the said provisions.

7. It is further submitted that the police had arrested the petitioner without serving him notice a under Section 41-A of the CrPC which is a



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gross violation of petitioner's fundamental and legal rights.

8. It is submitted that in order to constitute an offence under Section 153A of the IPC, it is mandatory that a person promotes or attempts to promote disharmony or feelings of enmity, hatred or ill-will between different religious, race groups, language or regional groups, castes or communities by words, either spoken or written, or by signs or by visible representations or otherwise on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever which disturbs or is likely to disturb the public tranquility.

9. It is further submitted that regardless of the ingredients of the aforesaid provision, in the present case, there is no unrest or disharmony in the society, and thus, no ill intention can be attributed to the petitioner in posting the tweet/post which could promote or attempt to promote hatred in the society.

10. It is submitted that the petitioner, being historian and an intellectual person (as he is an Assistant Professor) had expressed his thoughts without any intent as required under Sections 153A and 295A of the IPC and there is no deliberate or malicious act on the part of the petitioner. To strengthen his arguments, the learned counsel for the petitioner has placed reliance upon the judgment passed by the Hon'ble Supreme Court in the case of *Patricia Mukhim v. State of Meghalaya*, (2021) 15 SCC 35 as per which 'intention to promote feelings of enmity' is an essential ingredient for constitution of an offence under Section 153A of the IPC and the said intention has to be judged primarily by the language of the content written

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and the circumstances in which it was written and published.

11. Learned counsel for the petitioner has also relied upon the judgment passed by the Hon'ble Supreme Court in the case of ***Mahendra Singh Dhoni v. Yerraguntla Shyamsundar, (2017) 7 SCC 760*** and submitted that in order to determine whether any offence under Section 295A has been made out or not, it is to be noted that the said provision penalizes only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens.

12. Therefore, in view of the foregoing submissions, it is prayed that the aforesaid FIR may be quashed as no case is made out against the petitioner under Sections 153A and 295A of the IPC, and the said FIR is nothing but malicious prosecution against the petitioner as there has been no deliberate and malicious intention on the part of the petitioner to hurt sentiments of any religion.

13. *Per Contra*, learned APP for the State has opposed the instant petition by submitting that the present petition is nothing but a gross misuse of process of law. It is further submitted that the post on Twitter and Facebook have created hatred in the society as they are prejudicial to the maintenance of harmony in the society. It is further submitted that the contents of the said tweet/post show that there is a clear intent to hurt sentiments of the believers of Lord Shiva and the society at large.

14. It is further submitted that the petitioner continued to make such



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derogatory remarks even after the receipt of the complaint from Mr. Shiwal Bhalla and registration of the impugned FIR, and the same is apparent from the complaints later on received from Mr. Vasu Rukkhad, Mr. Jaspreet Singh Matta and Mr. Dinesh Kumar Katheria whose statements were recorded under Section 161 of the CrPC.

15. Learned APP, during the course of arguments, has handed over a print out of the Facebook post which has around 1000 comments and over 270 shares and submitted that even after registration of the impugned FIR, the petitioner has continued to make comments on the said post. The said print out is taken on record.

16. It is submitted that the comments made by the petitioner attract offences punishable under Sections 153A and 295A of the IPC as the said comments were made with the deliberate and malicious intention to create disharmony in the society and to hurt the sentiments of a large number of people who are believers of Lord Shiva.

17. It is further submitted that there is no force in the arguments advanced by the learned counsel for the petitioner that no offences against the petitioner under Sections 153A and 295A of the IPC are made out as the tweet/post has not created any unrest in the society. It is submitted that if the contents made in the FIR, tweet/post are taken on the face of it, a *prima-facie* case is made out against the petitioner under the aforesaid Sections.

18. Learned APP for the State, on instructions, submits that the investigation is going to be concluded in near future and in view of the

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above facts and circumstances, it is prayed that the present petition may be dismissed being devoid of any merit.

19. Heard learned counsel for the parties and perused the material available on record.

20. The impugned FIR was registered against the petitioner under Sections 153A and 295A of the IPC at the instance of a complaint made by one Mr. Shiwal Bhalla and several others, wherein, it was stated that the petitioner had made some derogatory and obscene remarks on Twitter and Facebook against 'Lord Shiva/Shiva Linga' which has hurt the religious sentiments and the said remarks were made with the intent to create disharmony in the society. Now, the petitioner has filed the instant petition seeking quashing of the impugned FIR on the ground that the impugned FIR is nothing but a gross misuse of the process of law as the essential ingredients to establish the commission of aforesaid offences are not made out against the petitioner because no unrest happened in the society and the ill-will of the petitioner cannot be ascertained from the reading of the contents of the tweet/post and the FIR.

21. For proper adjudication of the present petition, the relevant portion of Sections 153A and 295A of the IPC are reproduced herein below:

“..153A. 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) 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.

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



295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.— Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both...”

22. Perusal of provision of Section 153A of the IPC shows that the same criminalizes the act committed by a person that promotes enmity between different groups on grounds such as religion, race, language, caste, or community. The said provisions are intended to maintain public tranquility and communal harmony.

23. The said provision applies to any person who, through words (spoken or written), signs, visual representations, or any other act, seeks to create disharmony or feelings of hatred, enmity or ill-will between different groups. The said provision also encompasses acts prejudicial to the maintenance of harmony that may disturb public peace.

24. Moving further, perusal of Section 295A of the IPC shows that to constitute an offence thereunder, the act must be committed with deliberate intent and malicious purpose. The prerequisite to establish the commission of the said offence include the presence of *mens rea* similar to that under Section 153A of the IPC. Along with the criminal intent, there has to be a direct nexus with the act and its ability to insult or offend any religious belief. Section 295A of the IPC penalizes deliberate and



malicious acts intended to outrage the religious feelings of any class of citizens by insulting their religion or religious beliefs.

25. This Court is of the view that Section 153A of the IPC mandate the presence of *mens rea*, requiring that the accused has acted with the malicious intent or knowledge that their actions could incite hatred or disrupt public tranquility and create disharmony. The same has also been observed by the Hon'ble Supreme Court in *Patricia Mukhim (Supra)*, relevant paragraphs of which are extracted hereunder:

“..8. It is of utmost importance to keep all speech free in order for the truth to emerge and have a civil society.”—Thomas Jefferson. Freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution is a very valuable fundamental right. However, the right is not absolute. Reasonable restrictions can be placed on the right of free speech and expression in the interest of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. Speech crime is punishable under Section 153-AIPC. Promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony is punishable with imprisonment which may extend to three years or with fine or with both under Section 153-A. As we are called upon to decide whether a prima facie case is made out against the appellant for committing offences under Sections 153-A and 505(1)(c), it is relevant to reproduce the provisions which are as follows:.....

9. Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquility, the law needs to step in to prevent



such an activity. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153-AIPC and the prosecution has to prove the existence of mens rea in order to succeed. [Balwant Singh v. State of Punjab, (1995) 3 SCC 214 : 1995 SCC (Cri) 432]

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

26. The scope of Section 295A of the IPC extends to acts committed in public or private that have the potential to disturb social order or ignite communal tensions by hurting religious sentiments which disrupt public peace and provoke communal disharmony. The same was observed by the Hon’ble Supreme Court in **Mahendra Singh Dhoni (Surpa)**, relevant portion of which is as follows:

“...4. The seminal issue that arises for consideration is whether the allegations made in the complaint constitute an offence under Section 295-A IPC and whether this Court, in the obtaining factual matrix, relegate the trial at some other place or grant him liberty to file an application under Section 482 CrPC for quashing. At this juncture, we may refer to Section 295-A IPC which reads as follows:



“295-A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.—Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

5. Be it noted, the constitutional validity of Section 295-A was assailed before this Court in Ramji Lal Modi v. State of U.P. [Ramji Lal Modi v. State of U.P., AIR 1957 SC 620 : 1957 Cri LJ 1006] which was eventually decided by a Constitution Bench. The Constitution Bench, advertent to the multiple aspects and various facets of Section 295-A IPC, held as follows : (AIR pp. 622-23, paras 8-9)

“8. It is pointed out that Section 295-A has been included in Chapter XV of the Penal Code which deals with offence relating to religion and not in Chapter VIII which deals with offences against the public tranquillity and from this circumstance it is faintly sought to be urged, therefore, that offences relating to religion have no bearing on the maintenance of public order or tranquillity and consequently, a law creating an offence relating to religion and imposing restrictions on the right to freedom of speech and expression cannot claim the protection of clause (2) of Article 19. A reference to Articles 25 and 26 of the Constitution, which guarantee the right to freedom of religion, will show that the argument is utterly untenable. The right to freedom of religion assured by those articles is expressly made subject to public order, morality and health. Therefore, it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to



have been enacted in the interests of public order. Those two articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order.

9. The learned counsel then shifted his ground and formulated his objection in a slightly different way. Insults to the religion or the religious beliefs of a class of citizens of India may, says the learned counsel, lead to public disorders in some cases, but in many cases they may not do so and, therefore, a law which imposes restrictions on the citizens' freedom of speech and expression by simply making insult to religion an offence, will cover both varieties of insults i.e. those which may lead to public disorders as well as those which may not. The law insofar as it covers the first variety may be said to have been enacted in the interests of public order within the meaning of clause (2) of Article 19, but insofar as it covers the remaining variety will not fall within that clause. The argument then concludes that so long as the possibility of the law being applied for purposes not sanctioned by the Constitution cannot be ruled out, the entire law should be held to be unconstitutional and void. We are unable, in view of the language used in the impugned section, to accede to this argument. In the first place, clause (2) of Article 19 protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression "in the interest of public order", which is much wider than "for maintenance of" public order. If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law imposing reasonable restriction "in the interests of public order" although in some cases those activities may not actually lead to a breach of public order. In the next place, Section 295-A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only



those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the section, which penalises such activities, is well within the protection of clause (2) of Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 19(1)(a). Having regard to the ingredients of the offence created by the impugned section, there cannot, in our opinion, be any possibility of this law being applied for purposes not sanctioned by the Constitution. In other words, the language employed in the section is not wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Article 19(1)(a) and consequently, the question of severability does not arise and the decisions relied upon by the learned counsel for the petitioner have no application to this case.”

6. On a perusal of the aforesaid passages, it is clear as crystal that Section 295-A does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of a class of citizens. It penalises only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that



class of citizens. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. The Constitution Bench has further clarified that the said provision only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Emphasis has been laid on the calculated tendency of the said aggravated form of insult and also to disrupt the public order to invite the penalty...”

27. Now adverting to the facts of the instant petition.

28. As per the status report, the FIR against the petitioner was registered on complaint of one Mr. Shival Bhalla after the petitioner posted a photo of Hindu deity indicating a ‘*Shiva Linga*’, thereby, mentioning that ***“Yadi yeh Shiv Ling hai to Lagta hai shayad Shiv ji ka bhi khatna kar diya gaya tha”***. It has been alleged in the FIR that the said comment, in the form of visual representation, has been prejudicial to the maintenance of harmony between two different communities and has the potential to disturb public order and tranquility as it has been made with the intention to outrage feelings of a particular community by insulting their religious beliefs.

29. During the course of arguments, the learned APP has handed over a print out of the Facebook post made by the petitioner which has around 1000 comments and over 270 shares and submitted that even after registration of the impugned FIR, the petitioner has continued to make comments on the said post. In view of the same, subsequent complaints



were received from Mr. Vasu Rukkhad, Mr. Jaspreet Singh Matta and Mr. Dinesh Kumar Katheria and their statements were recorded under Section 161 of the CrPC.

30. It has been contended on behalf of the petitioner that he made the said post with responsibility and as a historian and that he is an Assistant Professor which would show that he had no intention to hurt any religious sentiments. It was argued that the petitioner is entitled to exercise his fundamental right of freedom of speech and expression. Further, since the act of the petitioner was not done with any malicious or deliberate intent, the ingredients of Sections 153A and 295A cannot be established and thus, no offence is made out against the petitioner as alleged in the impugned FIR.

31. This Court is not inclined to accept the contentions advanced by the learned counsel appearing on behalf of the petitioner. The act of the petitioner, by making posts on Twitter and Facebook, with a photo of the 'Shiva Linga' with derogatory remarks not only shows that there is a visual representation in terms of Sections 153A and 295A, but also shows the deliberate and malicious intent on the part of the petitioner.

32. At this juncture, it is pertinent for this Court to narrate the etymology and concept of 'Shiva Linga' which is followed and believed by the worshippers and believers of 'Lord Shiva/Shiva Linga'.

33. The sacred Hindu religious authority namely 'Shiv Puran, Vidhweshwar Samhita' contains the scriptures which explains the formation, existence, meaning and the pivotal role of 'Lord Shiva/Shiva



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Linga’ and which is given respect and plays an important role in the Hindu religion.

34. In ‘*Shiv Puran, Vidhweshwar Samhita*’, it has been stated that once Shri Brahma and Shri Vishnu had a war of words about who is supreme amongst them which soon turned into a battle. Equipped with mighty weapons, Shri Brahma and Shri Vishnu started attacking each other. As the war escalated and turned apocalyptical, an endless luminous pillar appeared between them and sucked their weapons. Both Shri Brahma and Shri Vishnu were astonished to witness a sudden appearance of a radiant pillar between them which was beyond their comprehension.

35. Henceforth, Shri Brahma went upwards and Shri Vishnu went downwards to explore the extent of the pillar. None of them could find the beginning and end of the pillar and thus they returned. Shri Brahma however, lied that he had seen the top end of the pillar. At that point in time God Shri Sadashiv (Kaal or Brahm) appeared and punished Shri Brahma by cutting his 5th head.

36. As both Shri Brahma and Shri Vishnu stood in reverence with folded hands, God Shri Sadashiv narrated the glory of the cosmic radiant pillar stood between them. This pillar was called the ‘*Shiva Linga*’. From that point on Lord Shri Sadashiv asked Shri Brahma and Shri Vishnu to worship the ‘*Shiva Linga*’ and the worship of the ‘*Shiva Linga*’ started since then.

37. ‘*Shiv Puran, Vidhweshwar Samhita*’ gives a detailed account of the aforesaid event. Further in ‘*Shiv Puran, Vidhweshwar Samhita*’, God Shri



Sadashiv explained what exactly 'Shiva Linga' was. The relevant extract of 'Shiv Puran, Vidhweshwar Samhita' is as under:

“...हे योगीन्द्र । मैं उस लिंगाविर्भावका लक्षण सुना चाहता हूँ ॥ नन्दिकेश्वर बोले हे वत्स ! सुनो मैं तुम्हारी प्रीतिसे कहता हूँ ॥ २६ ॥ पूर्वकालमें जो पहला कल्प था जो लोकमें विख्यात है उस समय महात्मा ब्रह्मा और विष्णुका परस्पर युद्ध हुआ था ॥ २७ ॥ उनके मान दूर करनेको उनके बीचमें उन निष्कल परमात्माने स्तम्भरूप अपना स्वरूप दिखाया ॥ २८ ॥ तब जगत्के हितकी इच्छासे निर्गुण शिवने उस तेजोमयस्तंभसे अपने लिंगाकारका स्वरूप दिखाया ॥ २९ ॥ उसीदिनसे लोकमें वह निष्कल शिवजीका लिंग विख्यात हुआ, और श्रोतुमिच्छामियोगीन्द्र लिंगाविर्भावलक्षणम् ॥ नन्दिकेश्वरउवाच ॥ शृणुवत्सभवत्प्रीत्यावक्ष्यामिपरमार्थतः ॥ २६ ॥ पुराकल्पेमहा काले प्रपत्रेलोकविश्रुते ॥ आयुध्येतामहात्मानौ ब्रह्मविष्णू परस्परम् ॥ २७ ॥ तयोर्मननिराकर्तुतन्मध्ये परमेश्वरः ॥ निष्कलस्तंभ रूपेणस्वरूपंसमदर्शयत् ॥ २८ ॥ ततःस्वलिंगचिह्नत्वात्स्तंभतोनिष्कलंशिवः ॥ स्वलिंगदर्शयामासजगतांहितकाम्यया ॥ २९ ॥ तदाप्रभृतिलोकेषु निष्कलंलिंगमैश्वरम् ॥ सकलंचतथा बेरंशिवस्यैवप्रकल्पितम् ॥ ३० ॥ शिवान्येषः तुदेव । नांवेरमात्रंप्रकल्पितम् ॥ तत्तद्वेरंतुदेवानांतत्तद्भोगप्रदंशुभम् ॥ शिवस्यलिंग बेरत्व भोगमोक्षप्रदं शुभम् ॥ ३१ ॥ इतिश्रीशिवमहापुराणोविद्येश्वरसंहितायांपंच मोऽध्यायः ॥ ५ ॥ नन्दिकेश्वरउवाच ॥ पुराकदाचिद्योगीन्द्र विष्णुर्विषधरासनः ॥ सुष्वापपरयाभूत्या स्वानुगैरपिसंवृतः ॥ १ ॥ यह च्छयागतस्तत्रब्रह्माब्रह्मविदांवरः ॥ अपृच्छत्पुंडरीकाक्षशयनंसर्वसुन्दरम् ॥ २ ॥ सगुणरूपमें बेररूप की कल्पना की गई ॥ ३० ॥ देवताओंकी वह बेर पूजा इच्छानुसार भोगोंको देनेहारी है परन्तु शिवका लिंगबेर भोग और मोक्ष दोनोंका देनेहारा है ॥....”

38. The aforesaid narration explains the beliefs of the society at large and upon reading of the same, it is obvious that the act and remarks made



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by the petitioner are contrary to the beliefs and customs followed and practiced by the worshippers and believers of '*Lord Shiva/Shiva Linga*'. Thus, the same shows that whatever content was posted by the petitioner not only hurts the religious sentiments of the complainant but also promotes hatred, enmity and communal tensions among two different communities. Moreover, the act of the petitioner by making repeated comments, even after registration of the FIR further shows the deliberate and criminal act of the petitioner which definitely attracts the applicability of Sections 153A and 295A of the IPC.

39. It has been also argued by the petitioner that his act, even if taken to be insulting and hurtful, did not provoke any unrest in the society. With regard to the same, this Court is of the considered view that merely stating that no unrest or disharmony happened in the society cannot be a ground for quashing of the impugned FIR registered under Sections 153A and 295A of the IPC. The same is based on the premise that mere non-occurrence of unrest in the society does not negate the criminality of the petitioner's act as the said act of the petitioner was done with the intent, foresight and possibility of creating disturbance and disharmony in the society, thereby, causing unrest. Further, the Investigating Officer found that the case is made out against the petitioner and his act constitutes commissions of offences under the said provisions which goes on to show that there are sufficient material available on record including the statements recorded under Section 161 of the CrPC for registration of FIR against the petitioner.

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40. It is to be noted that the petitioner, being a historian and an educator owes a greater responsibility to the society at large as he is a role model for the ordinary masses. An intellectual person is instrumental in guiding others and the society at large and thus, he should be more conscious while giving such type of statements in a public domain as the same carries weight and power to influence other people which, if made in a negative manner, such as in the instant case, might create unrest and disturb the peace of the society.

41. In view of the same, this Court is of the considered view that while both the aforesaid provision aims to prevent the misuse of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution, it is subject to reasonable restrictions under Article 19(2).

42. Moreover, there are a catena of judgments of the Hon'ble Supreme Court as well as this Court that emphasize that liability under the said provisions arises only when there is a clear and imminent likelihood of promoting enmity or disturbing public peace which is based upon the intent of the accused. Thus, Sections 153A and 295A of the IPC balances the right to free speech with the need to maintain social harmony as the freedom of speech and expression is not absolute.

43. Here, this Court also deems it appropriate to discuss the extent of exercise of inherent powers of this Court under Section 482 of the CrPC (now Section 528 of the BNSS). The Hon'ble Supreme Court, in *Neeharika Infrastructure (Supra)*, (2021) 19 SCC 401 reiterated the principles to be followed while quashing an FIR and held as under:



“10.3. Then comes the celebrated decision of this Court in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . In the said decision, this Court considered in detail the scope of the High Court powers under Section 482CrPC and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

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

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

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

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

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



(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides 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.”

13. *From the aforesaid decisions of this Court, right from the decision of the Privy Council in Khwaja Nazir Ahmad [King Emperor v. Khwaja Nazir Ahmad, 1944 SCC OnLine PC 29 : (1943-44) 71 IA 203 : AIR 1945 PC 18] , the following principles of law emerge:*

13.1. *Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences.*

13.2. *Courts would not thwart any investigation into the cognizable offences.*

13.3. *However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on.*

13.4. *The power of quashing should be exercised sparingly with circumspection, in the “rarest of rare cases”. (The rarest of rare cases standard in its application for quashing under Section 482 CrPC is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court.)*



13.5. While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

13.6. Criminal proceedings ought not to be scuttled at the initial stage.

13.7. Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule.

13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 CrPC.

13.9. The functions of the judiciary and the police are complementary, not overlapping.

13.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

13.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

13.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process



of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

13.13. *The power under Section 482CrPC is very wide, but conferment of wide power requires the Court to be cautious. It casts an onerous and more diligent duty on the Court.*

13.14. *However, at the same time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint.*

13.15. *When a prayer for quashing the FIR is made by the alleged accused, the Court when it exercises the power under Section 482CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.*

14. *Whether the High Court would be justified in granting stay of further investigation pending the proceedings under Section 482CrPC before it and in what circumstances the High Court would be justified is a further core question to be considered..."*

44. Perusal of the aforesaid extracts shows that in terms of the settled position of law, an FIR can be quashed by the High Court - where the



allegations made in the FIR do not *prima facie* constitute any offence or make out a case against the accused, where the uncontroverted allegations made in the FIR do not disclose the commission of any offence, where the allegations made in the FIR 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, where a criminal proceeding is manifestly attended with mala fides 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 etc.

45. Therefore, upon perusal of the contents made in the FIR, petition as well as the status report and bearing in mind the settled position of law discussed hereinabove, this Court is of the view that *prima facie*, the petitioner has created disturbance of the harmony of the society and this Court has also found that the said tweet/post were made with the intention to hurt the sentiments of a large number of the society and no person being a Professor, Teacher, or an intellectual has the right to make such type of comments, tweets or posts as the freedom of speech and expression or any type of freedom is not absolute.

46. Taking into consideration the discussions made in the foregoing paragraphs, this Court does not find any merit in the present petition to exercise the inherent powers of this Court under Section 482 of the CrPC (now Section 528 of the BNSS).

47. Accordingly, the instant petition stands dismissed. Pending



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applications, if any, also stand dismissed.

48. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be deemed to be an expression of opinion on the merits of the case.

DECEMBER 17, 2024

Rt/ryp/av

CHANDRA DHARI SINGH, J

Click here to check corrigendum, if any

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KUMAR BABBAR
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