IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Before:

The Hon'ble Justice Anuj Singh

W.P.A. No. 21358 of 2024

Sk. Safikul Islam

-Versus-

Union of India & Ors.

For the Petitioner : Mr. Pintu Karar
Mr. Rishabh Ahmad Khan
Mr. Sabab Uddin Laskar
Md. Danish
..... Advocate.

For the State : Mr. Suryaneel Das
Mr. Partha Chakroborty
Ms. Sneha Chatterjee
..... Advocate

For the applicant In CAN 1 of 2026 : Mr. Moyukh Mukherjee
Ms. Sagnika Banerjee
Mr. T. Pramanick
Ms. S. Basak
..... Advocate.

Heard on : 24.09.2026

Judgement on : 09.10.2026

Anuj Singh, J:.

1. The petitioner has filed the instant application invoking this Court's jurisdiction under Article 226 of the Constitution of India, inter alia, praying for quashing of Manicktala Police Station Case No. 117 of

2024 dated 02.08.2024 registered for investigation into the offences punishable under Section 196/353(2) of the Bharatiya Nyaya Sanhita, 2023, which was based on a written complaint lodged by one, Mrityunjoy Paul.

2. A bare perusal of the letter of complaint would reveal that an online television Channel named, Arambagh T.V., a person named,Safiqul Islam passed some comments in a live telecast stating thatthe East Bengal Club belongs to Rohingyas and that clubs like East Bengal should be banned from the country.

3. It is stated that on the basis of the above allegations, Manicktala Police Station Case No. 117 of 2024 dated 02.08.2024 was registered for investigation into the offences punishable under Section 196/353(2) of the Bharatiya Nyaya Sanhita, 2023. It is stated that the investigation of the said case is still going on.

4. The complaint attributes to the petitioner the statements that East Bengal Club belongs to Rohingyas and that clubs such as East Bengal should be banned from the country. The question is whether these statements, taken as alleged and read in their context, disclose the ingredients of Sections 196 and 353(2) of the BNS. Their allegedly derogatory or provocative content does not by itself answer that question.

5. The petitioner has preferred the instant application *inter alia* praying for quashing of the above referred F.I.R. The petitioner claims to be a journalist who has a YouTube news channel, popularly known as Arambagh TV. The petitioner claims that the said YouTube channel contains news and critical analysis of the functioning of the State Government. It is contended by the petitioner that before starting the said online channel, the petitioner was employed with Calcutta Television Network and ran a local vernacular newspaper namely, Arambag Barta.

6. The petitioner contends that the instant FIR is one of many false criminal cases filed against him and that the Petitioner has been similarly implicated in several other criminal proceedings since the year 2005, as his views and opinions were perceived to be motivated against the then State Government.

7. In such circumstances, the petitioner moved the present petition and prayed for an interim order of stay of all further proceedings in the said F.I.R. Accordingly, by an interim order dated 4th October 2024 passed by this court, all proceedings in connection with the instant case were stayed till 31st December 2024. By the said order, the respondent police authorities were directed not to take any coercive action against the petitioner. It is stated that the investigation of said

case has remained stayed ever since and that no charge sheet has been submitted in the case.

8. While the matter stood thus, the de facto complainant has intervened in the present proceeding by filing C.A.N. No. 1 of 2026, *inter alia* praying for his impleadment as a party to the present proceeding. The de facto complainant has further submitted that, in the event the aforesaid FIR is quashed, the de facto complainant shall have no objection to the same. It is submitted that the de facto complainant under a misunderstanding of fact and that the applicant does not intend to pursue the said criminal proceeding any further. On consent of the parties CAN 1 of 2026 is allowed.

9. It appears that both the de facto complainant as well as the petitioner have approached this court with a joint prayer for quashing of the F.I.R., investigation into which is going on.

10. Although the de facto complainant has conceded to the prayer for quashing of the aforesaid FIR, the same cannot be quashed merely on such concession of the de facto complainant. It is necessary to carefully examine the complaint which resulted in registration of the instant FIR to ascertain whether the same discloses any cognizable offence.

11. It is now well settled that the power of the High Court to quash a FIR may be exercised under Article 226 of the Constitution of India, as well as under its inherent jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023. In *State of Haryana v. Bhajan Lal (1992) Supp (1) SCC 335*, which itself arose from a proceeding under Article 226 of the Constitution, the Supreme Court, after considering *R. P. Kapoor v. State of Punjab, AIR 1960 SC 866*, laid down the broad categories of cases under which such power may be exercised, either to prevent abuse of the process of any court or otherwise secure the ends of justice.

12. It is equally well settled that the aforesaid power should be exercised sparingly and with circumspection. However, the Court would be justified in quashing a proceeding if its initiation or continuation amounts to an abuse of process of Court. When a proceeding is sought to be quashed, it is permissible to look into materials to assess what the complainant has alleged and whether any offence is made out, even if the allegations are accepted in their totality.

13. The question whether an FIR may be quashed, relying upon the de facto complainant's willingness, also requires consideration. In *Gian Singh v. State of Punjab (2012) 10 SCC 303*, the Supreme Court has held that the High Court may quash a proceeding involving non-compoundable offenses where the dispute is predominantly of private

or civil nature and where the possibility of conviction is so remote that the continuation of the proceeding would be oppressive. The Supreme Court has, however, cautioned that such power may not be exercised in offenses involving heinous and serious offenses, or those offenses which have a serious impact on society or are against the State.

14. Based on the above settled principles of law, the allegations made in the subject FIR are now examined.

15. The FIR has been registered for investigation into the offenses punishable under Section 196 and Section 353(2) of the BNS.

16. Section 196(1) provides that when a person, by words either spoken or written or by signs or 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, disharmony or feelings of enmity, hatred or ill-will between different groups or communities, or commits any act prejudicial to the maintenance of harmony between them which disturbs or is likely to disturb the public tranquillity, then he would be liable to punishment extending to 3 years or with fine or both.

16A. The provision requires the involvement of at least two groups or communities, as held in *Bilal Ahmed Kaloo v. State of A.P., (1997) 7 SCC 431.* Relevantportion of the judgment is reproduced hereunder:

> ***"11.*** *This Court has held in Balwant Singh v. State of Punjab [(1995) 3 SCC 214 : 1995 SCC (Cri) 432] that mens rea is a necessary ingredient for the offence under Section 153-A. Mens rea is an equally necessary postulate for the offence under Section 505(2) also as could be discerned from the words "with intent to create or promote or which is likely to create or promote" as used in that sub-section.*
> ***15.*** *The common feature in both sections being promotion of feeling of enmity, hatred or ill will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections."*

16B. Further, the provision requires intention to cause such disorder is its sine qua non (*Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1*). Relevantportion of the judgment is reproduced hereunder:

> ***"16.*** *Section 153-A IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquillity. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book 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."*

16C. Lastly, the effect of such words is to be judged from the standards of reasonable, strong-minded, firm and courageous men, and not of those of weak and vacillating minds, which was held in

Patricia Mukhim v. State of Meghalaya, (2021) 15 SCC 35.

Relevantportion of the judgment is reproduced hereunder:

> ***"11.*** *In Bilal Ahmed Kaloo v. State of A.P. [Bilal Ahmed Kaloo v. State of A.P., (1997) 7 SCC 431 : 1997 SCC (Cri) 1094] , this Court analysed the ingredients of Sections 153-A and 505(2)IPC. It was held that Section 153-A covers a case where a person by "words, either spoken or written, or by signs or by visible representations", promotes or attempts to promote feeling of enmity, hatred or ill will. Under Section 505(2) promotion of such feeling should have been done by making a publication or circulating any statement or report containing rumour or alarming news. Mens rea was held to be a necessary ingredient for the offence under Sections 153-A and 505(2). The common factor of both the sections being promotion of feelings of enmity, hatred or ill will between different religious or racial or linguistics or religious groups or castes or communities, it is necessary that at least two such groups or communities should be involved. It was further held in Bilal Ahmed Kaloo [Bilal Ahmed Kaloo v. State of A.P., (1997) 7 SCC 431 : 1997 SCC (Cri) 1094] that merely inciting the feelings of one community or group without any reference to any other community or group cannot attract any of the two sections. The Court went on to highlight the distinction between the two offences, holding that publication of words or representation is sine qua non under Section 505. It is also relevant to refer to the judgment of this Court in Ramesh v. Union of India [Ramesh v. Union of India, (1988) 1 SCC 668 : 1988 SCC (Cri) 266] in which it was held that words used in the alleged criminal speech should be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. The standard of an ordinary reasonable man or as they say in English law "the man on the top of a Clapham omnibus" should be applied."*

Further, the relevant excerpt of the provision is produced herein:

"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…shall be punished with imprisonment which may extend to three years, or with fine, or with both."

17. Section 353(2) provides that any person who 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, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, then he would be liable to punishment extending to 3 years or with fine or both. Relevant excerpt of the provision is produced herein:

"353. Statements conducing to public mischief.—
…
(2) Whoever makes, publishes or circulates any statement or report containing false information, rumour or alarming news, including through electronic means, with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

Analysis of the contents of the FIR vis-a-vis the penal provisions under the statute.

18. The de facto complainant in this case is a viewer of the live telecast broadcasted by the petitioner. The allegations, as narrated above, proceed entirely on the premise that the de facto complainant believes/feels the same to be false.

19. As regards Section 196 BNS the complaint speaks only of different groups of people and does not specifically name any group, caste or race, as required by *Bilal Ahmed Kaloo* (supra). The supporters of a sporting club cannot be considered as a group defined by religion, race, place of birth, residence, language, caste or community within the meaning of Section 196. Further, the intention attributed to the petitioner is stated only as a bare conclusion, with no fact from which it could be inferred. Judged by the standard of reasonable and strong-minded persons (*Patricia Mukhim*, supra), nothing alleged in the FIR shows a tendency to promote enmity between groups. This court does not find any element of the offence under Section 196 of the BNS in the present complaint.

20. With regard to Section 353(2), the complaint does not allege that anything said by the petitioner was false, or was a rumour or alarming news. The allegation is only that the comments were derogatory and provocative. A derogatory statement is not, for that reason, false. Thus, foundational ingredient of Section 353(2) is therefore absent.

21. This court finds that even if the allegations made in the letter of complaint are accepted in their entirety and believed to be true, no ingredients of the offences punishable under Section 196 and Section 353(2) of the BNS are remotely found in FIR.

22. It is evident that since the allegations taken on the face of the FIR and taken at its face value do not constitute any offence or make out a case against the accused, there is no question of permitting the said proceeding to continue any further.

23. It is also evident that the said criminal proceeding is manifestly attended with malafide and/or the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused.

24. In view of the aforesaid, and particularly in view of the fact that the de facto complainant is no longer willing to pursue the said prosecution any further or support the prosecution case even if a purported charge sheet is submitted in the court below, the continuation of the present proceeding would be a sheer abuse of the process of law. It is required to be nipped in the bud, without any further delay.

25. The Court has examined the complaint independently of the de facto complainant's subsequent statement contained in CAN 1 of 2026. The allegations relate to a publication said to affect harmony between groups and public order; its prosecution cannot be brought to an end merely because the complainant no longer wishes to pursue it. The present conclusion is entirely on basis of the allegations in the complaint, taken at their face value. This Court finds they do not

disclose the essential ingredients of the offences for which the FIR was registered. This Court expresses no finding on the truth or falsity of the contents of the video or the allegations made against it.

26. In view of the aforesaid discussion, Manicktala Police Station Case No. 117 of 2024 dated 02.08.2024, and all proceedings arising therefrom, are hereby quashed. Any bail bond furnished by the petitioner in connection with the said case stands discharged.

27. Let a copy of this order be transmitted to the jurisdiction magistrate for records and necessary action.

(Anuj Singh, J.)