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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.161 OF 2025

1. Mr. Amit s/o Arunrao Tete,
Aged about 35 Years,
Occupation : Business,
R/o Malipura, Khapa,
Saoner, District Nagpur.
2. Sandeep s/o Arunrao Tete,
Aged about : 40 Years,
Occupation : Service,
Both R/o. 201, Shivani Heights,
Gokul Housing Society,
Borgaon road, Nagpur.
3. Ashay s/o Ajay Bhujade,
Aged about 39 Years,
Occupation : Private,
R/o Flat No.703,
Capital Heights, Medical Square,
Nagpur.
4. Tejas s/o Dvendara Maske,
Aged about : 22 Years,
Occupation Private,
R/o. C/o. Amit Arunrao Tete,
Near Post Office, Malipura,
Post Khapa.

.... APPLICANTS

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Khapa, District Nagpur.
2. Anil s/o Janba Patil,
Aged Major Years,
Occupation : Service,
R/o. Mouza Malipura,
Khapa, District Nagpur.

....NON-APPLICANTS

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Mr. A. A. Mardikar, Advocate for applicants.
Mr. Nikhil Joshi, APP for non-applicant No.1/State.
Mr. K. S. Dhoble, Advocate for non-applicant No.2

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 04/02/2026

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. Heard finally with the consent of the learned Counsel for the applicants, learned APP for the State and learned counsel for the non-applicant No.2.
4. Present application is preferred by the applicants for quashing of the FIR in connection with Crime No.587/2024 registered with Police Station Khapa, District Nagpur for the offence punishable under Sections 296, 3(5), 351(3) and 352 of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as 'BNS').
5. The crime is registered on the basis of a report lodged by the non-applicant No.2 Anil Patil, who is teacher by profession and resides opposite of the residence of the applicant No.1. It is alleged that on 10.11.2024 at about 11.15 p.m. in the night, the applicant No.1 along with his cousin Tejes, who is applicant No.4 were fired the crackers in the late night to which the complainant

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objected because of that he was abused and threatened by the present applicants. On the basis of the said report, police have registered the crime against them.

6. Heard learned counsel for the applicants, who submitted that on perusal of the entire FIR and the entire investigation papers, offence under Section 294 of IPC (296 of BNS) is not made out, mere abuses are not sufficient to attract Section 294 of IPC (296 of BNS). As far as the offence punishable under Sections 351 and 352 of BNS are concerned, which are not attracted and the ingredients of the offences are not made out. In view of that, the application deserves to be allowed.

7. Per contra, learned APP submitted that abusive words are specifically mentioned by the non-applicant No.2, which is sufficient to attract the offence punishable under Sections 296, 351 and 352 of the BNS. In view of that, the application deserves to be rejected. Learned counsel for the complainant endorsed the same contention.

8. On hearing both sides and on perusal of the recitals of the FIR, wherein the allegations are levelled of abuses by the applicants to the complainant. On perusal of the recitals of the FIR, it reveals that the words used covers under abuses, but as far as the obscenity is concerned, after applying the test which is

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narrated in the judgment of Hon'ble Apex Court in the case of **N. S. Madhanagopal and another vs K. Lalitha** reported **(2022) 17 SCC 818** wherein it is laid down that test of obscenity under Section 294(b) of the IPC observed that "the test of obscenity is this, "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences". "This test has been uniformly followed in India. The Supreme Court has accepted the correctness of the test in **Ranjit D. Udeshi v. State of Maharashtra, [MANU/SC/0080/1964]** wherein the test of "obscenity" is the 'substantial tendency to corrupt by arousing lustful desires'. It impure thoughts, I do not think that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, but I do not think the words are "obscene" and the utterance would constitute an offence punishable under under Section 294(b) IPC".

9. This aspect is further considered by the Hon'ble Apex Court in the case of **Om Prakash Ambadkar Vs. The State of Maharashtra and Ors., [MANU/SC/0134/2025]** and observed that in so far as Section 294 of the IPC is concerned, this Court in **N. S. Madhangopal and Another v. K. Lalitha** referred supra has explained the true purport and scope of Section 294. It is further observed that it has to be noted that in the instance case, the absence of words which will involve some

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lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. It is further observed that "mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the Appellant-accused annoyed others, it cannot be said that the ingredients of the offence under Section 294(b) Indian Penal Code are made out."

10. Here in the present case also except the abusive language, there is no allegation that due to the said words any annoyance is caused to the others. At the most, it could be said that the words used are defamatory or humiliating words and that is not sufficient to attract the offence under Section 296 of the IPC.

11. As per as Section 351(3) and 352 are concerned, it is alleged that the applicants have threatened the informant and

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thereby committed an offence of criminal intimidation. Section 503 of the IPC defines the definition of criminal intimidation, which reads as "Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation." Section 351 also talks about the punishment which is provided for the said act.

12. Intentionally insulting a person and thereby provoking such person is the ingredients of the said offence which appears to be absent in the present case. Thus, by no stretch of imagination, it can be said that the nature of the allegation levelled in the FIR *prima facie* constitutes the offence punishable either under Sections 296, 351(3) of 352 of the BNS.

13. By applying the principles laid down by the Hon'ble Apex Court in the case of **State of Haryana and others Vs Bhajan Lal and others** reported in **1992 Supp. (1) SCC 335**, which are reproduced as under:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their

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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 concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the

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concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

14. On perusal of the recitals of the FIR, this is a fit case wherein the power under Section 482 of the Code of Criminal Procedure (under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) can be exercised. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is **allowed**.

(ii) The FIR in connection with Crime No.587/2024 registered with Police Station Khapa, District Nagpur for the offence punishable under Sections 296, 3(5), 351(3) and 352 of the Bharatiya Nyaya Sanhita, 2023 and consequent proceeding arising out of the same bearing SCC No.543/2025 pending before the Judicial Magistrate First Class, Saoner, are hereby quashed and set aside to the extent of the present applicants.

The application is disposed of.

(URMILA JOSHI-PHALKE, J)