



CNR: KAHC010339692024

NC: 2026:KHC:49925
CRL.P No. 5909 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

CRIMINAL PETITION NO. 5909 OF 2024

BETWEEN:

SRI VENKAPPA GOWDA
S/O VEERAPPA GOWDA,
AGED ABOUT 49 YEARS,
R/AT PANJA, PANJA POST,
SULLIA TALUK, AIVATHOKLU
DAKSHINA KANNADA,
PIN CODE-574232

...PETITIONER

(BY SRI. SUYOG HERELE E, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH SUBRAMANYA PS
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA BUILDING,
BENGALURU-560 001.

2. SRI VENKAPPA N.P
S/O FAKEERA
AGED ABOUT 63 YEARS,
R/AT BELAGAJE HOUSE,
PAMBETHADI VILLAGE, SULLIA
TALUK, DAKSHINA KANNADA
PIN CODE-574232.

...RESPONDENTS

(BY SRI. MAHESH P, HCGP FOR R1,
R2 - SERVED, UNREPRESENTED)





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THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO QUASH THE FIR AND COMPLAINT IN CR.NO.38/2024 REGISTERED BY THE RESPONDENT SUBRAMANYA P.S. FOR THE OFFENCE P/U/S 505(2) OF IPC PENDING ON THE FILE OF PRINCIPAL CIVIL JUDGE (JR.DN.) AND J.M.F.C. COURT, SULLIA, D.K. DISTRICT, PRODUCED AS DOCUMENT NO.1 AND 2.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL ORDER

1. This petition is filed under Section 482 of Cr.P.C. seeking to quash the FIR registered in Crime No.38/2024 by the respondent - Subramanya Police Station for the offence punishable under Section 505(2) of IPC against the petitioner based on the complaint lodged by respondent No.2.

2. The factual matrix of the case is that respondent No.2, the Member of Indian National Congress party lodged a complaint on 07.06.2024 alleging that on the next day of announcement of result of general election of Lok Sabha i.e., on 05.06.2024, the petitioner uploaded WhatsApp status stating that "Modi ji has not lost, he has won and the people who have lost are born to Muslims". As such, alleging that said



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statement in WhatsApp status by the petitioner, has created enmity between the community, respondent No.2 lodged a complaint. Based on which, FIR in Crime No.38/2024 was registered, which is under challenge before this Court in the instant petition.

3. Learned counsel for the petitioner would contend that respondent No.2 is not an aggrieved party and the WhatsApp status uploaded by the petitioner under no way cause disorder or incite people to violence in order attract the offence alleged in the FIR. Further, the statement in the complaint does not disclose semblance of *mens-rea* on the part of the petitioner to incite violence. He also submitted that the complaint was lodged by a party worker only for political gain, that too after two days of uploading of WhatsApp status. Accordingly, he would pray for quashing of the FIR.

4. *Per contra*, learned HCGP would oppose the prayer made in the petition and submit that the complaint clearly discloses the ingredients of the provisions of Section 505 (2) of IPC and since the investigation is yet to complete, the FIR cannot be



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quashed. Accordingly, he would pray for dismissal of the petition.

5. I have given my anxious consideration to the submissions of learned counsel for the petitioner as well as the learned HCGP. A perusal of the complaint averments reveals that the complaint has been lodged by the party worker of Indian National Congress on the next day of announcement of result of general elections of Lok Sabha against the afore-stated WhatsApp status of the petitioner. A careful reading of the said WhatsApp status does not disclose any semblance of intention or motive on the part of the petitioner to cause disorder or incite people to violence so as to attract the ingredients of Section 505(2) of IPC. Moreover, the same was posted in WhatsApp status, which is neither a social media platform nor any public forum and it is accessible normally to people who are in his contact list. As such, the primary ingredients for the offence under Section 505(2) IPC i.e., publication or circulation of the of statement are absent. The Hon'ble Apex Court in the case of **BILAL AHMED KALOO V. STATE OF A.P., - (1997) 7 SCC 431** has held as under:



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"10. Section 153-A was amended by the Criminal and Election Laws (Amendment) Act, 1969 (Act No. 35 of 1969). It consists of three clauses of which clauses (a) and (b) alone are material now. By the same Amending Act sub-section (2) was added to Section 505 of the Penal Code, 1860. Clauses (a) and (b) of Section 153-A and Section 505(2) are extracted below:

"153-A. 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) ***

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



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505. (2) *Statements creating or promoting enmity, hatred or ill will between classes.*—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news 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.”

The common ingredient in both the offences is promoting feeling of enmity, hatred or ill will between different religious or racial or linguistic or regional groups or castes or communities. 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 such feeling. Under Section 505(2), promotion of such feelings should have been done by making and publishing or circulating any statement or report containing rumour or alarming news.

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.



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12. The main distinction between the two offences is that while publication of the words or representation is not necessary under the former, such publication is sine qua non under Section 505. The words "whoever makes, publishes or circulates" used in the setting of Section 505(2) cannot be interpreted disjunctively but only as supplementary to each other. If it is construed disjunctively, anyone who makes a statement falling within the meaning of Section 505 would, without publication or circulation, be liable to conviction. But the same is the effect with Section 153-A also and then that section would have been bad for redundancy. The intention of the legislature in providing two different sections on the same subject would have been to cover two different fields of similar colour. The fact that both sections were included as a package in the same amending enactment lends further support to the said construction.

13. Yet another support to the above interpretation can be gathered from almost similar words used in Section 499 of the Penal Code as "whoever by words ... makes or publishes any imputation ...".

14. In *Sunilakhya Chowdhury v. H.M. Jadwet* [AIR 1968 Cal 266 : 1968 Cri LJ 736] it has been held that the words "makes or publishes any imputation" should be interpreted as words supplementing each other. A maker of imputation without publication is not liable to be punished under that section. We are of the view that the same interpretation is



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warranted in respect of the words "makes, publishes or circulates" in Section 505 IPC also.

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.

16. The result of the said discussion is that the appellant who has not done anything as against any religious, racial or linguistic or regional group or community cannot be held guilty of either the offence under Section 153-A or under Section 505(2) of 1PC."

The above findings of the Hon'ble Apex Court squarely apposite to the facts of the instant case. Moreover as discussed supra, there is no publication or circulation of the statements by the petitioner and since the same is posted in the WhatsApp status, the ingredients of Section of 505(2) IPC does not attract on the face of the complaint averments. Hence, continuation of proceedings against the petitioner in Crime No.38/2024 is nothing but abuse of process of law.



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6. In that view of the matter, the FIR registered in Crime No.38/2024 by the respondent - Subramanya Police Station for the offence punishable under Section 505(2) of IPC against the petitioner is hereby quashed. The petition is accordingly ***allowed.***

**SD/-
(RAJESH RAI K)
JUDGE**

PKS
List No.: 1 Sl No.: 28