

Reserved on : 02.09.2026
Pronounced on : 16.10.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 7632 OF 2025

BETWEEN:

SRI BASANAGOUDA R. PATIL (YATNAL)
S/O RAMANAGOUDA PATIL
AGED ABOUT 62 YEARS, OCC.:MLA,
VIJAYPURA CONSTITUENCY
OLD IB, STATION ROAD,
VIJAYPURA – 586 101, KARNATAKA.

ALSO AT:
SINDAGI ROAD MAHAL AINAPUR
AINAPURA, BIJAPUR, KARNATAKA – 586 104.

...PETITIONER

(BY SRI GIRISH BHARADWAJ, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY HUBALLI TOWN POLICE STATION
HUBALLI-DHARWAD – 580 001.
REPRESENTED BY
STATE PUBLIC PROSECUTOR

HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

2. MOHAMMAD HANNAN
S/O MUNIR AHMAD SHAIKH
AGED ABOUT 38 YEARS,
OCC.:BUSINESSMAN
ADD.:NEAR BASARI BAVI,
MANAGULI, AGASI
VIJAYAPURA – 583 107.

...RESPONDENTS

(BY SRI ANOOP KUMAR, ADDL.SPP FOR R-1;
SRI R.KOTHWAL, ADVOCATE FOR R-2)

THIS CRL.P IS FILED U/S 528 OF BNSS., PRAYING TO QUASH
FIR IN CR.NO.51/2025 REGISTERED BY THE RESPONDENT NO.1
HUBBALLI TOWN P.S. PENDING ON THE FILE OF THE LEARNED
J.M.F.C 1ST COURT, HUBLI, HUBLI-DHARWAD FOR THE OFFENCES
P/U/S 196(1), 299 AND 353(1) OF BNS 2023 PRODUCED AT
DOCUMENT NO.1.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 02.09.2026, COMING ON FOR
PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before the Court calling in question registration of a crime in Crime No.51 of 2025 registered for offences punishable under Sections 196(1), 299 and 353(1) of the BNS, 2023.

2. Heard Sri Girish Bharadwaj, learned counsel appearing for the petitioner, Sri Anoop Kumar, learned Additional State Public Prosecutor appearing for respondent No.1 and Sri R. Kothwal, learned counsel appearing for respondent No.2.

3. Facts, in brief, germane are as follows: -

The petitioner, a sitting Member of the Legislative Assembly addresses a speech on 07-04-2025. On the said speech the crime in Crime No.80 of 2025 comes to be registered before the Gandhi Chowk Police Station at Vijayapura. That is challenged before this Court in Criminal Petition No.5628 of 2025. The moment an interim order is granted, a second complaint on the same incident of

speech comes to be registered on 17-04-2025. The said crime is registered in Hubballi Town Police Station coming under Hubballi South Division. Both the crimes are on account of a speech delivered by the petitioner on 07-04-2025. The registration of crime in Crime No.51 of 2025 is what has driven the petitioner to this Court in the subject petition.

4. The learned counsel Sri Girish Bharadwaj appearing for the petitioner would vehemently contend that the crime is deliberately registered on two places so that the petitioner would not be in a position to take advantage of the interim order so granted by this Court in CrI.P.No.5628 of 2025. He would submit that there is no disharmony that has generated by the statement of the petitioner and the matter is completely covered by the judgments of the Apex Court on the issue.

5. Per contra, the learned counsel Sri R.Kothwal appearing for the 2nd respondent would vehemently refute the submissions in contending that the statements of the petitioner, on the face of it, did generate communal disharmony and therefore, the matter has to be permitted to be tried. It cannot be closed at the threshold

even if another crime on the same incident has been quashed. The present crime must be permitted to be investigated into. The learned counsel would take this Court through the application seeking vacation of the interim order and rely on plethora of judgments rendered on the issue.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are a matter of record. The entire issue gets triggered from registration of a complaint. The complaint reads as follows:

“ಗೆ

ಪೊಲೀಸ್ ಠಾಣಾಧಿಕಾರಿಗೆ,

ಗೋಲ್ ಗುಂಬಜ ಪೊಲೀಸ್ ಠಾಣೆ,

ವಿಜಯಪುರ.

ವಿಷಯ: ಹುಬ್ಬಳ್ಳಿಯ ಬಾಣಿ ಓಣಿಯಲ್ಲಿ, ದಿನಾಂಕ: 07/04/2025 ರಂದು ನಡೆದ

ರಾಮನವಮಿ ಕಾರ್ಯಕ್ರಮದಲ್ಲಿ ಇಸ್ಲಾಂ ಧರ್ಮ ಮತ್ತು ಪ್ರವಾದಿ

ಮಹಮ್ಮದ್ (ಸ.ಅ) ರವರ ಬಗ್ಗೆ ಪ್ರಚೋದನಕಾರಿ ಮತ್ತು ಅವಹೇಳನಕಾರಿ

ಭಾಷಣ ಮಾಡಿದ ಬಸನಗೌಡ ಪಾಟೀಲ್ ಯತ್ನಾಳ್ ಅವರ ವಿರುದ್ಧ ದೂರು.

ಮಾನ್ಯರೇ,

ನಾನು ಮೋಹಮ್ಮದ್ ಹನ್ನಾನ್, ತಂದೆ ಮುನೀರ್ ಅಹ್ಮದ್ ಶೇಖ್, ವಯಸ್ಸು 38 ವರ್ಷ,

ಉದ್ಯೋಗ-ವ್ಯಾಪಾರ, ಜಾತಿ: ಮುಸ್ಲಿಂ, ಸಾ: ಬಸರಿ ಬಾವಿ ಹತ್ತಿರ, ಮನಗೂಳಿ ಅಗಸಿ, ವಿಜಯಪುರ,

ಮೊಬೈಲ್ ಸಂಖ್ಯೆ: 8660047194, ಈ ಮೂಲಕ ತಮ್ಮ ರಾಣಿಯಲ್ಲಿ ದೂರನ್ನು ದಾಖಲಿಸುತ್ತಿದ್ದೇನೆ. ನಾನು ಮಾಧ್ಯಮಗಳ ವರದಿಗಳು ಮತ್ತು ಇತರ ಮೂಲಗಳ ಮೂಲಕ ತಿಳಿದುಕೊಂಡಿರುವ ವಿಷಯವೇನೆಂದರೆ,

ವಿಜಯಪುರ ನಗರ ಶಾಸಕ ಬಸನಗೌಡ.ಆರ್.ಪಾಟೀಲ್ (ಯತ್ನಾಳ್)ನು ಹುಬ್ಬಳ್ಳಿ ನಗರದ ಬಾಣಿ ಓಣಿಯಲ್ಲಿ ದಿನಾಂಕ: 07-04-2025 ರಂದು ನಡೆದ ರಾಮನವಮಿ ಕಾರ್ಯಕ್ರಮವೊಂದರಲ್ಲಿ ಇಸ್ಲಾಂ ಧರ್ಮ ಮತ್ತು ಇಸ್ಲಾಂ ಧರ್ಮದ ಪವಿತ್ರ ಪ್ರವಾದಿ ಮಹಮ್ಮದ್ (ಸಲ್ಲಲ್ಲಾಹು ಅಲೈಹಿ ವಸಲ್ಲಂ) ರವರ ಬಗ್ಗೆ ಅತ್ಯಂತ ಪುಚ್ಚೋದನಕಾರಿ, ಅವಹೇಳನಕಾರಿ ಮತ್ತು ದುರುದ್ದೇಶಪೂರಿತ ಭಾಷಣ ನೀಡಿದ್ದಾರೆ. ನಿರ್ದಿಷ್ಟವಾಗಿ ಹೇಳುವುದಾದರೆ, ಅವರು ತಮ್ಮ ಭಾಷಣದಲ್ಲಿ "ಬಾಳ ಸಾಬ್‌ರಾತ್ರೆ ಮನೆಯಲ್ಲಿ ಮಹಮ್ಮದ್ ಪೈಗಂಬರ್ ಹುಟ್ಟಿದ್ದಾನೆ" ಎಂಬ ಆಧಾರರಹಿತ ಮತ್ತು ಧಾರ್ಮಿಕ ಅವಮಾನಕಾರಕ ಹೇಳಿಕೆಯನ್ನು ನೀಡಿದ್ದಾನೆ.

ಅವನ ಈ ಹೇಳಿಕೆಗಳು ಮುಸ್ಲಿಂ ಸಮುದಾಯದ ಧಾರ್ಮಿಕ ಭಾವನೆಗಳಿಗೆ ತೀವ್ರವಾದ ಆಘಾತವನ್ನುಂಟುಮಾಡಿದ್ದು, ಸಮಾಜದಲ್ಲಿ ಶಾಂತಿ ಮತ್ತು ಸೌಹಾರ್ದತೆಗೆ ಧಕ್ಕೆಯಾಗುವ ರೀತಿಯಲ್ಲಿವೆ. ಇಂತಹ ಭಾಷಣಗಳು ಮುಸ್ಲಿಂ ಸಮುದಾಯದಲ್ಲಿ ಅಸಮಾಧಾನ ಮತ್ತು ಆಕ್ರೋಶವನ್ನು ಹುಟ್ಟುಹಾಕಿವೆ.

ಅವನ ಈ ಕೃತ್ಯವು ಕಲಂ196 (1), 299, 353(1) BNS-2023 ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಣ ಅಪರಾಧಗಳಿಗೆ ಒಳಪಡುವಂತಾಗಿದೆ: ಈ ಭಾಷಣವನ್ನು ಟಿವಿ-9 ಕನ್ನಡ ವಾಹಿನಿಯ ಅಧಿಕೃತ ಯೂಟ್ಯೂಬ್ ಚಾನೆಲ್‌ನಲ್ಲಿ ಕೂಡ ಪ್ರಸಾರ ಮಾಡಲಾಗಿದೆ. <https://youtu.be/ZghONHMMJ3M?si=SOHKsNxEcuxe5bGd> ಹೀಗಾಗಿ ಈ ವಿಷಯವನ್ನು ತಕ್ಷಣ ಪರಿಗಣಿಸಿ, ಬಸನಗೌಡ ಪಾಟೀಲ್ ಯತ್ನಾಳ್ ಅವರ ವಿರುದ್ಧ ಕಾನೂನುಬದ್ಧವಾದ ಕ್ರಮವನ್ನು ಕೈಗೊಂಡು ಶಾಂತಿ, ಸೌಹಾರ್ದತೆ ಮತ್ತು ಕಾನೂನು ಪ್ರಭುತ್ವವನ್ನು ಕಾಯ್ದುಕೊಳ್ಳಲು ಕ್ರಮವಹಿಸಬೇಕಾಗಿ ಈ ಮೂಲಕ ನಾನು ವಿನಂತಿಸುತ್ತೇನೆ.

ಧನ್ಯವಾದಗಳೊಂದಿಗೆ,

ಸಹಿ/-

ಸ್ಥಳ: ವಿಜಯಪುರ.

ದಿನಾಂಕ: 08/04/2025."

The complaint relates to a speech delivered by the petitioner on 07-04-2025 on the occasion of Ramanavami. Two crime had sprung on the same speech, one within the jurisdiction of Vijayapura Police Station which was stayed at the hands of this Court on 17-04-2025

and the other is the impugned crime. Therefore, there are two crimes registered on the same fulcrum. Insofar as the crime in Crime No.80 of 2025 which was subject matter of Criminal Petition No.5628 of 2025, this Court has disposed of the same in terms of its order dated 20-08-2026. The order reads as follows:

"The petitioner is before this Court calling in question the registration of a crime in Crime No.80/2025 pending before the 1st Addl. Civil Judge (Jr. Dn.) and JMFC, Bijapur for the offences punishable under Sections 196(1), 299 and 353(1) of the BNS.

2. Facts, in brief, germane are as follows:

The petitioner allegedly made a statement on the occasion of Ramanavami, against which respondent No.2 - complainant files a complaint, alleging that the statement of the petitioner hurt the religious sentiments of a certain religious community. On that score, a crime comes to be registered in Crime No. 80/2025 against the petitioner for the afore-quoted offences.

3. Heard Sri. Venkatesh Dalwai, learned counsel appearing for the petitioner and Sri. Anoop Kumar, learned Additional State Public Prosecutor appearing for respondent No.1.

4. The learned counsel appearing for the petitioner would submit that on the same offence there are two FIRs registered and would submit that the issue in the *lis* stands covered by the judgment rendered by this Court in the case of **SRI BASANAGOUDA R. PATIL (YATNAL) v. THE STATE OF KARNATAKA, CrI.P.No.13650/2024, disposed on 30.01.2024.**

5. Sri. Naveed Ahmed, learned counsel appearing for respondent No.2 would refute the submission contending that some conditions should be imposed.

6. I have given my anxious consideration to the respective submissions made by the respective learned counsel for the parties and have perused the material on record.

7. The afore-narrated facts and link in the chain of events are a matter of record and would not require any reiteration. The issue in the *lis* lies in a narrow compass. The issue now would be, whether the ingredients of the offences under Sections 196(1), 299 and 353(1) of the BNS, which were Sections 153A, 295A and 505 of the earlier regime - the IPC, respectively, are met in the case at hand.

8. What should be the ingredients of the afore-quoted offences need not detain this Court for long as the Apex Court in the case of **IMRAN PRATAPGADHI v. STATE OF GUJARAT**, reported in (2026) 1 SCC 721 following its earlier judgment in the case of **JAVED AHMAD HAJAM v. STATE OF MAHARASHTRA** reported in (2024) 4 SCC 156, interprets Sections 196 and 299 of the BNS, and holds as follows:

" "

14. Now, let us examine whether any offence as alleged is attracted. Section 196 BNS reads thus:

"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

(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) 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."

15. The offence under Section 196 is attracted when the words, either spoken or written, or by signs or visible representations, promote enmity between different groups, on the grounds of religion, race, place of birth, residence, language, caste or, community or any other ground. The offence will be attracted when the words either spoken or written, or signs or visible representation, promote or attempt to promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. On a plain reading of the poem, we find that the same has nothing to do with any religion, caste, community or any particular group. The poem's words do not bring about or promote disharmony or feelings of hatred or ill-will. It only seeks to challenge the injustice made by the ruler. **It is impossible to say that the words used by the appellant disturb or are likely to disturb public tranquillity. Therefore, neither clause (a) nor clause (b) of Section 196(1) are attracted. There is no allegation against the appellant of organising any exercise, movement, drill or similar activity. There is no allegation against the appellant that he uttered the words in any place of worship or in any assembly engaged in the performance of religious worship or**

religious ceremonies. Hence, clause (c) will have no application. The appellant has put a video of a mass marriage function, and in the background, the words are uttered. Therefore, Section 196 can have no application.

16. Section 197 reads thus:

"197. Imputations, assertions prejudicial to national integration.—(1) Whoever, by words either spoken or written or by signs or by visible representations or through electronic communication or otherwise—

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India; or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied, or deprived of their rights as citizens of India; or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons; or

(d) makes or publishes false or misleading information, jeopardising the sovereignty, unity and integrity or security of India,

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

(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."

17. As stated earlier, the poem does not make or publish any imputation and is not concerned with any religious, racial, language, regional group, caste, or community. It does not suggest that any class of persons have been denied rights as citizens because they are members of a religious, racial, language, regional group, caste, or community. It does not make or publish any assertion, counsel, plea or appeal likely to cause disharmony or feeling of enmity or hatred or ill will. The poem does not publish or make any false or misleading information.

18. Offence under Section 299 BNS is also alleged against the appellant, which reads thus:

"299. 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 through electronic means 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."

19. To say the least, it is ridiculous to say that the act of the appellant is intended to outrage the religious feelings of any class by insulting its religion or religious beliefs. The poem only tells the rulers what the reaction will be if the fight for rights is met with injustice.

....

31. Coming back to the offence punishable under Section 196 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 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.

32. We will give an example. A person utters the following words. "If the rulers attack me, I will not retaliate and, on the contrary, face the attack with love. If I do that, it will lead to the defeat of the rulers." If the person who furnishes information, alleges that these words are spoken or written to promote enmity between different groups as provided in Section 196, while deciding whether the information is of commission of a cognizable offence, the officer concerned will have to read and understand the meaning of the alleged spoken words. This exercise does not amount to making a preliminary inquiry which is prohibited under sub-section (1) of Section 173 BNSS.

....

Standard to be applied

40. 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 *Bhagwati Charan Shukla v. Provincial Govt., C.P. & Berar* [Bhagwati Charan Shukla v. Provincial Govt., C.P. & Berar, 1946 SCC OnLine MP 5], in para 67, it is held thus: (SCC OnLine MP)

"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 Section 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 Section 4, as also in the Ordinance, is precisely the formula used in Section 124-A, 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 supplied)

41. What is held by Bose and Puranik, JJ. in *Bhagwati Charan Shukla* [Bhagwati Charan Shukla v. Provincial Govt., C.P. & Berar, 1946 SCC OnLine MP 5], has been quoted with approval in at least two cases. The first such case is in the decision of *Manzar Sayeed Khan v. State of Maharashtra* [Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417]. The second case is the decision in *Ramesh v. Union of India* [Ramesh v. Union of India, (1988) 1 SCC 668: 1988 SCC (Cri) 266]. Finally, the view taken by Bose and Puranik, JJ., as the Judges of Nagpur High Court, is again quoted with approval by this Court in *Javed Ahmad Hajam v. State of Maharashtra* [Javed Ahmad Hajam v. State of Maharashtra, (2024) 4 SCC 156 : (2024) 2 SCC (Cri) 383].

42. This Court in *Javed Ahmad Hajam* [Javed Ahmad Hajam v. State of Maharashtra, (2024) 4 SCC 156 : (2024) 2 SCC (Cri) 383], was dealing with an offence punishable under Section 153-AIPC. Section 153-AIPC is in pari materia with Section 196 BNS. The only difference is that the words "or through electric communication" have been added in clause (a) of Section 196 BNS, which were not in clause (a) of Section 153-AIPC. When an offence punishable under Section 196 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.

Ingredient of mens rea

43. In *Manzar Sayeed Khan* [Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417] and *Patricia Mukhim v. State of Meghalaya* [Patricia Mukhim v. State of Meghalaya, (2021) 15 SCC 35], the ingredient of mens rea has been read into Section 153-AIPC by this Court. Paras 8 to 14 of the decision in *Javed Ahmad Hajam* [Javed Ahmad Hajam v. State of Maharashtra, (2024) 4 SCC 156 : (2024) 2 SCC (Cri) 383], which analyses both the above decisions,

read thus: (*Javed Ahmad Hajam case* [Javed Ahmad Hajam v. State of Maharashtra, (2024) 4 SCC 156 : (2024) 2 SCC (Cri) 383], SCC pp. 161-64)

"8. This Court in *Manzar Sayeed Khan* [Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1: (2007) 2 SCC (Cri) 417] referred to the view taken by Vivian Bose, J., as a Judge of the erstwhile Nagpur High Court in *Bhagwati Charan Shukla v. Provincial Govt., C.P. & Berar* [Bhagwati Charan Shukla v. Provincial Govt., C.P. & Berar, 1946 SCC OnLine MP 5] . A Division Bench of the High Court dealt with the offence of sedition under Section 124-AIPC and Section 4(1) of the Press (Emergency Powers) Act, 1931. The issue was whether a particular article in the press tends, directly or indirectly, to bring hatred or contempt to the Government established in law. This Court has approved this view in its decision in *Ramesh v. Union of India* [Ramesh v. Union of India, (1988) 1 SCC 668 : 1988 SCC (Cri) 266] . In the said case, this Court dealt with the issue of applicability of Section 153-AIPC. In para 13, it was held thus: (Ramesh case [Ramesh v. Union of India, (1988) 1 SCC 668 : 1988 SCC (Cri) 266] , SCC p. 676)

'13. ... the effect of the words must 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. ... It is the standard of ordinary reasonable man or as they say in English law "the man on the top of a Clapham omnibus".'

Therefore, the yardstick laid down by Vivian Bose, J., will have to be applied while judging the effect of the words, spoken or written, in the context of Section 153-AIPC.

9. We may also make a useful reference to a decision of this Court in *Patricia Mukhim v. State of Meghalaya* [Patricia Mukhim v. State of Meghalaya, (2021) 15 SCC 35] . Paras 8 to 10 of the said decision read thus: (SCC pp. 41-43)

'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 tranquillity, 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]."

10. Now, coming back to Section 153-A, clause (a) of sub-section (1) of Section 153-

AIPC is attracted when by words, either spoken or written or by signs or by visible representations or otherwise, an attempt is made to promote disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities. The promotion of disharmony, enmity, hatred or ill will must be on the grounds of religion, race, place of birth, residence, language, caste, community or any other analogous grounds. Clause (b) of sub-section (1) of Section 153-AIPC will apply only when an act is committed 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.

11. Now, coming to the words used by the appellant on his WhatsApp status, we may note here that the first statement is that August 5 is a Black Day for Jammu and Kashmir. 5-8-2019 is the day on which Article 370 of the Constitution of India was abrogated, and two separate Union Territories of Jammu and Kashmir were formed. Further, the appellant has posted that "Article 370 was abrogated, we are not happy". On a plain reading, the appellant intended to criticise the action of the abrogation of Article 370 of the Constitution of India. He has expressed unhappiness over the said act of abrogation. The aforesaid words do not refer to any religion, race, place of birth, residence, language, caste or community. It is a simple protest by the appellant against the decision to abrogate Article 370 of the Constitution of India and the further steps taken based on that decision. The Constitution of India, under Article 19(1)(a), guarantees freedom of speech and expression. Under the said guarantee, every citizen has the right to offer criticism of the action of abrogation of Article 370 or, for that matter, every decision of the State. He has the right to say he is unhappy with any decision of the State.

12. *In Manzar Sayeed Khan [Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417]*, this Court has read "intention" as an essential

ingredient of the said offence. The alleged objectionable words or expressions used by the appellant, on its plain reading, cannot promote disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities. The WhatsApp status of the appellant has a photograph of two barbed wires, below which it is mentioned that "AUGUST 5 — BLACK DAY — JAMMU & KASHMIR". This is an expression of his individual view and his reaction to the abrogation of Article 370 of the Constitution of India. It does not reflect any intention to do something which is prohibited under Section 153-A. At best, it is a protest, which is a part of his freedom of speech and expression guaranteed by Article 19(1)(a).

13. Every citizen of India has a right to be critical of the action of abrogation of Article 370 and the change of status of Jammu and Kashmir. Describing the day the abrogation happened as a "Black Day" is an expression of protest and anguish. If every criticism or protest of the actions of the State is to be held as an offence under Section 153-A, democracy, which is an essential feature of the Constitution of India, will not survive.

14. The right to dissent in a legitimate and lawful manner is an integral part of the rights guaranteed under Article 19(1)(a). Every individual must respect the right of others to dissent. An opportunity to peacefully protest against the decisions of the Government is an essential part of democracy. The right to dissent in a lawful manner must be treated as a part of the right to lead a dignified and meaningful life guaranteed by Article 21. But the protest or dissent must be within four corners of the modes permissible in a democratic set up. It is subject to reasonable restrictions imposed in accordance with clause (2) of Article 19. In the present case, the appellant has not at all crossed the line."

(emphasis in original and supplied)

44. Hence, mens rea will have to be read into Section 196 BNS. In this case, looking to the

text of the words spoken and the context in which those were spoken, it is impossible to attribute any mens rea to the appellant.

....

53. Following is the summary of our conclusions:

53.1. Sub-section (3) of Section 173 BNSS makes a significant departure from Section 154CrPC. 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 proceeding in the matter. However, under Section 154CrPC, as held in *Lalita Kumari* [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524], 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 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 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.

53.2. Under sub-section (3) of Section 173 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.

53.3. In case of the offence punishable under Section 196 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 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.

53.4. 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.

53.5. 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 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.

53.6. When an offence punishable under Section 196 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.

53.7. 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 482CrPC equivalent to Section 528 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.

53.8. 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.

53.9. 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."

(Emphasis supplied)

The Apex Court in the afore-quoted judgment holds that the offences under sections 196 and 299 of the BNS require the officer in charge of the police station to consider the meaning of the spoken or written words and observe if it makes out a cognizable offence. The respondent no.1 - police did not make such consideration in the present case.

9. What would now remain is the offence under Section 353 of the BNS/Section 505 of the IPC. The Apex Court in the case of **PATRICIA MUKHIM v. STATE OF MEGHALAYA** reported in **(2021) 15 SCC 35** interprets Section 505 of the IPC and holds as follows:

" "

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.**

12. This Court in *Pravasi Bhalai Sangathan v. Union of India* [*Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477 : (2014) 3 SCC (Cri) 400] had referred to the Canadian Supreme Court decision in *Saskatchewan (Human Rights Commission) v. William Whatcott* [*Saskatchewan (Human Rights Commission) v. William Whatcott*, 2013 SCC OnLine Can SC 6 : (2013) 1 SCR 467]. In that judgment, the Canadian Supreme Court set out what it considered to be a workable approach in interpreting “hatred” as is used in legislative provisions prohibiting hate speech. The first test was for the Courts to apply the hate speech prohibition

objectively and in so doing, ask whether a reasonable person, aware of the context and circumstances, would view the expression as exposing the protected group to hatred. The second test was to restrict interpretation of the legislative term "hatred" to those extreme manifestations of the emotion described by the words "detestation" and "vilification". This would filter out and protect speech which might be repugnant and offensive, but does not incite the level of abhorrence, delegitimisation and rejection that risks causing discrimination or injury. The third test was for the Courts to focus their analysis on the effect of the expression at issue, namely, whether it is likely to expose the targeted person or group to hatred by others. Mere repugnancy of the ideas expressed is insufficient to constitute the crime attracting penalty.

13. In the instant case, applying the principles laid down by this Court as mentioned above, the question that arises for our consideration is whether the Facebook post dated 4-7-2020 was intentionally made for promoting class/community hatred and has the tendency to provoke enmity between two communities. A close scrutiny of the Facebook post would indicate that the agony of the appellant was directed against the apathy shown by the Chief Minister of Meghalaya, the Director General of Police and the DorbarShnong of the area in not taking any action against the culprits who attacked the non-tribals youngsters. The appellant referred to the attacks on non-tribals in 1979. At the most, the Facebook post can be understood to highlight the discrimination against non-tribals in the State of Meghalaya. However, the appellant made it clear that criminal elements have no community and immediate action has to be taken against persons who had indulged in the brutal attack on non-tribal youngsters playing basketball. The Facebook post read in its entirety pleads for equality of non-tribals in the State of Meghalaya. In our understanding, there was no intention on the part of the appellant to promote class/community hatred. **As there is no attempt made by the appellant to incite people belonging to a community to indulge in any violence, the basic ingredients of the offence under Sections 153-A and 505(1)(c) have not been made out. Where allegations made in the FIR or the complaint, even if they are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the FIR is liable to be quashed [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]."**

(Emphasis supplied)

The Apex Court holds that the basic ingredient of the offence under Sections 196 and 353 of the BNS or Sections 153-A and 505 of the IPC is an attempt to incite people belonging to a community to indulge in any violence being made out. This ingredient has also not been met in the present case.

10. For the aforesaid reasons, the following:

ORDER

- (i) The criminal petition is **allowed**.
- (ii) The impugned crime in Crime No.80/2025 pending on the file of I Additional Civil Judge (Jr. Dn.) and JMFC Court, Bijapur District, stands quashed.

Ordered accordingly.

Pending applications, if any, stand disposed as a consequence."

The said order has become final. The second crime on the same incident must tumble down for the very reason of quashment of the crime in Crime No.80 of 2025.

8. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition is **allowed**.

- (ii) FIR in Crime No.51 of 2025 registered by Hubballi Town Police Station on 17-04-2025 and pending before the JMFC I Court, Hubli stands quashed.

Pending applications, if any, also stand disposed.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

BKP