

2022 LiveLaw (AB) 259

HIGH COURT OF JUDICATURE AT ALLAHABAD
ASHWANI KUMAR MISHRA; RAJNISH KUMAR, JJ.
25.05.2022

Siddharth Varadarajan and Another v. State of U.P. And 2 Others

Counsel for Petitioner:- Mehul Khare, Pragma Pandey; Counsel for Respondent:- G.A.

1. Heard Ms. Pragma Pandey, learned counsel for the petitioners and learned A.G.A. for the State. None appeared for the informant despite sufficient service.
2. The instant petition has been filed for quashing the First Information Report (here-in-after referred as FIR) dated 31.01.2021 in Case Crime No.27 of 2021, under Section 153-B and 505 (2) of Indian Penal Code (here-in-after referred as IPC), registered at Police Station- Civil Lines, District- Rampur alongwith consequential reliefs.
3. Petitioner no.1 is the founding editor of online news publication 'The Wire' and the petitioner no. 2 is the reporter of the said online news publication. The farmers were protesting against three farmer laws enacted in 2020. As a mark of protest they marched in Delhi on 26.01.2021 and in an incident near 'ITO' New Delhi, a young man named Navreet Singh Dibdiba hailing from district Rampur, U.P. suffered serious injuries and succumbed to death. The State version is that death was caused due to an accident involving his tractor whereas some of the eye witnesses and the victims primarily claim that it was due to bullet injury. 'The Wire' covered this incident in its report dated 30.01.2021 titled "Autopsy Doctor Told Me He'd Seen the Bullet Injury but Can Do Nothing as His Hands are Tied" authored by the petitioner no.2 and shared it on Twitter handle at 10.08 A.M. A clarificatory statement was issued by the three doctors who carried out the postmortem denying that they had spoken to the media or any other person or they made any such statement. The said news was also published by the petitioner no.1 on 30.01.2021 at 04:46 P.M. after it was issued by Rampur Police at 4.39 P.M. The FIR was lodged on 31.01.2021 at 00.59 bearing FIR No. 27 of 2021 under Sections 153-B and 505 (2) IPC against the petitioner no.1 on the basis of a complaint by one Sanju Turaiha / respondent no.3 alleging that the petitioner no.1 by way of the aforementioned tweet, sought to provoke the masses, spread riot, tarnish the image of medical officers by proving wrong to the panel of Medical Officers and disturb law and order and though the doctors who performed the postmortem denied that they have told the victim's family that the cause of the death was bullet injuries but the petitioner no.1 did not delete the tweet. The petitioners approached the Hon'ble Supreme Court challenging the three FIRs. Including the FIR No. 27 of 2021 in Writ Petition (Criminal) No.71 of 2021. The Hon'ble Supreme Court by means of the order dated 08.09.2021 permitted the petition to be withdrawn by the petitioner no. 2 and granted protection from any coercive action for a period of two months. Consequently, the present writ petition has been filed.
4. Learned counsel for the petitioners submitted that the petitioners have wrongly and falsely been implicated in the case. The allegations made in the FIR does not disclose the commissioning of any offence under Section 153-B and 505 (2) IPC. The petitioners had only published the statement of the parents of the deceased and the contradictions

of the doctors was also published / uploaded at the earliest after it's release. Therefore even if the same was not deleted it does not constitute any offence. There was no threat of riots and in fact there was no violence or riot on account of the alleged publication. She had further submitted that the fair criticism is permissible under law. She had also submitted that the grand father of the deceased has moved the Delhi High Court praying for a Court monitored probe into the death of his grandson, where the High Court has issued the notices and the Delhi High Court is monitoring the investigation. Therefore the FIR is nothing but an abuse of process of law and curtailment of right to freedom of speech. Therefore the impugned FIR is not sustainable in the eyes of law and liable to be quashed.

5. Learned A.G.A. vehemently opposed the submissions of learned counsel for the petitioners. He submitted that the FIR has rightly been lodged in accordance with law as despite the contradictions of the doctors in regard to the statement published by the petitioners, the news item was not deleted. The allegations levelled in the FIR disclose the commissioning of offence under Section 153-B and 505 (2) IPC. Therefore the FIR can not be quashed and the writ petition is liable to be dismissed.

6. We have considered the submissions of learned counsel for the parties and perused the record.

7. The farmers were protesting against the three farm laws enacted in the year 2020. As a part of their protest the farmers marched into New Delhi on 26.01.2021. During the protest in an incident near 'ITO' New Delhi, a young man named Navreet Singh Dibdiba hailing from district Rampur, U.P. died due to certain injuries suffered in the incident. 'The Wire' online news publication, the founding editor of which is the petitioner no.1, covered this incident in its news report dated 30.01.2021 titled as "Autopsy Doctor Told Me He'd Seen the Bullet Injury but Can Do Nothing as His Hands are Tied" authored by petitioner no. 2. The news item is extracted below:-

'Autopsy Doctor Told Me He'd Seen the Bullet Injury But Can Do Nothing as His Hands are Tied'

Grandfather of Navreet Singh, killed in tractor parade on January 26, levels dramatic charge, doctors deny making any statement.

Note: This story ends with a video of the wounds on Navreet Singh's face which some readers may find disturbing.

New Delhi: *The family of Navreet Singh – the young man killed during the tractor parade in the capital on January 26 – has refused to accept the Delhi police's claim that he died because his tractor overturned, and insists he was shot – as farmers who say they were witness to the incident near ITO had originally claimed.*

The cause of Navreet Singh's death is at the centre of three sedition cases that the police in Uttar Pradesh, Madhya Pradesh and Haryana have filed against journalists including India Today's Rajdeep Sardesai, and the Congress politician Shashi Tharoor for blaming his death on a gunshot.

The Delhi police were quick to release video footage in which a tractor can be seen crashing into a police barricade and overturning. However, farmers at the scene claimed Navreet had been shot at before he lost control of the vehicle.

The post mortem report, prepared by a medical officer at the District Hospital, Rampur, after a 2 am autopsy on January 27, concluded that the “cause of death is shock and haemorrhage as a result of ante-mortem head injury”, which Delhi Police officials have cited as consistent with their explanation.

The family, however, contests this report.

‘We were cheated, now courts will decide’

“We were told by the doctor that they have clearly seen the bullet injury, and then we cremated his body peacefully. But we were cheated, as the [post mortem] report that came out did not say that. The doctor even told me that even though he had seen the bullet injury, he can do nothing as his hands are tied,” Hardeep Singh Dibdiba, Navreet’s grandfather alleged, while speaking to The Wire on Friday, three days after his death.

On their part, the doctors have denied saying any such thing.

Dibdiba, 68, has been part of the farmers’ protest since the beginning, he says, adding that he has authored five books on Sikhism. However, after his grandson’s death, he is back in Dibdiba village of Rampur in Uttar Pradesh.

Noting the mention that the post-mortem report makes of two “lacerated” wounds, one on Navreet’s chin and the other behind his ear, he said, “They [doctors] haven’t directly mentioned the word bullet in the post-mortem, but given the circumstances and the kind of government that is governing the state, they wrote as much as they could about it. Now the courts themselves will clear the matter once we have a lawyer,” he said. Navreet’s father, Vikramreet Singh, 46, said, “Everybody who saw his dead body saw that it was a bullet injury. One of the doctors who did the post-mortem said that it is a bullet injury, but that he can’t write it.” He added that his son had recently returned from Australia and went to Delhi to participate in the tractor parade by farmers. “We will finish his last rites by February, 4 and then go ahead with our plan of action,” he said.

UP police deny interference or pressure

Denying the family’s bullet injury claim, the seniormost police officer of the area, ADG Bareilly Avinash Chandra, said, “We had made a panel of senior doctors for the autopsy. We have no reason to suppress or distort such a document because the matter is of Delhi Police.”

One organisation the family could approach, say lawyers, is the National Human Rights Commission, which could examine the video made during the autopsy and cross examine the doctor who wrote up the report.

What happened that day?

When this reporter saw Navreet Singh’s body lying on the road at ITO on January 26, several farmers identified themselves as eyewitnesses to the incident and claimed that the young man had died as a result of being hit by a bullet.

Though no police personnel were visible within at least 300 meters from the dead body, the farmers told reporters that the police had “dispersed from the scene.”

Even after the Delhi Police released footage which showed Navreet’s tractor turning turtle, the farmers at the scene stuck to their claims. “A bullet hit him and that is why he lost control of the tractor and met with an accident,” said one man who said he was a witness.

Family says deep gash above ear is ‘exit wound’ of bullet

The post mortem report makes no mention of any bullet injury but does note the presence of an inverted injury on the left side of Navreet’s lower chin, and an everted injury above his right ear. The

report, which *The Wire* has accessed, lists six injuries including those over the eyebrow, chin, skull, ear ossicles, chest and thigh.

The post mortem report mentions a “lacerated wound of size 2cmx1cm over left side of the chin, 1cm below left angle of the mouth,” adding that “margins are inverted and bone deep.” Another injury, the report said, was a “lacerated wound of size 6cmx3cm over [the] right ear, margins are irregular and everted (inside out) right ear ossicles and brain matter is coming out from [the] wound.” The report also mentions a “lacerated wound of size 2cmx1cm bone deep medial end of right eyebrow, margins are inverted,” and “traumatic swelling” over the skull.

The family claims that the injury on his right ear is the exit wound from the bullet. However, Manoj Shukla, deputy CMO and doctor at the district hospital in Rampur where the post-mortem report was prepared, said this was not so. Speaking to *The Wire* over the phone on Friday, he said that it is possible that something else might have hit his right ear. “Or you may have got the wrong document,” he added.

According to a senior doctor at the All India Institute of Medical Sciences, speaking to *The Wire* on condition of anonymity, laceration wounds can be associated with bullet injuries. A laceration is a wound that occurs when skin, tissue, and/or muscle is torn or cut open. Lacerations may be deep or shallow, long or short, and wide or narrow. Most lacerations are the result of the skin hitting an object, or an object hitting the skin with force.

He said, “It seems that the post mortem report has carefully been made to remove any doubts about a bullet injury.” He added that the nature of the injury on his lower chin and ear could be possible entry and exit points of a bullet injury, especially given that the two injuries form a straight line. He added, “If a bullet had passed this man’s head, the mandible bone would have been fractured but the report doesn’t mention it. In fact, the autopsy report does not mention any X-rays done.”

Navreet Singh’s father says that the doctors had assured them that a bullet injury was visible in the X-rays but refused to show it to them. Dr. Shukla also confirmed that XRays were taken during the autopsy. However the post-mortem does not refer to any of them.

The family also shared a video of Navreet’s face, pointing to the deep holes visible in his left chin and above his right ear, making the point that this was a bullet injury. While it is impossible for journalists or lay persons to reach any firm conclusion, the family is hoping an independent probe will establish the truth.

Reacting to Dibdiba’s allegations, the Rampur police tweeted a statement on Saturday evening signed by the three doctors involved in Navreet Singh’s post-mortem denying that they had spoken “to the media or any other person” or provided any such information as is being attributed to them in the media.”

In the news the State's version as well as the allegations of victim's family were published. It also carries contents of the postmortem report. A clarification of the three doctors was issued by the Rampur Police at 04:39 PM on the same date. It was also published, immediately thereafter, at 04:46 PM on 30.01.2021. The statement reads as follows:-

नोट (खण्डन)

दिनांक- 27.01.2021 को रात्रि 02.00 बजे श्री नवरीत सिंह आयु लगभग 24 वर्ष पुत्र श्री विक्रमजीत सिंह उर्फ साहब सिंह, निवासी- ग्राम डिबडिया, थाना बिलासपुर जनपद रामपुर का पोस्टमार्टम थाना अध्यक्ष, बिलासपुर के मैमों पर तीन चिकित्सीय पैनल के द्वारा किया गया था, जिसकी नियमानुसार वीडियोग्राफी भी करायी गयी थी। उपरोक्त पोस्टमार्टम के पैनल में शामिल तीनों चिकित्साधिकारियों में से किसी भी चिकित्साधिकारी द्वारा मीडिया में किसी भी प्रकार का वक्तव्य/बयान जारी नहीं किया गया है। और यह भी कहना है कि पोस्टमार्टम करने वाले चिकित्साधिकारी द्वारा पोस्टमार्टम रिपोर्ट की एक प्रति पुलिस अधीक्षक व एक प्रति सम्बन्धित थानाध्यक्ष/पुलिस अधिकारी को सीलड पैक लिफाफे में उपलब्ध करायी जाती है। इसके अतिरिक्त पोस्टमार्टम रिपोर्ट के सम्बन्ध में मा० न्यायालय में आवश्यकता पड़ने पर मा० न्यायालय द्वारा बुलाये जाने पर ही पोस्टमार्टम करने वाले चिकित्साधिकारी द्वारा मा० न्यायालय में वक्तव्य/बयान दिया जाता है

अतः श्री नवरीत सिंह की पोस्टमार्टम रिपोर्ट के सम्बन्ध में चिकित्साधिकारियों के नाम से मीडिया में प्रकाशित किये जा रहे समाचार/वक्तव्य का पूर्णतयः खण्डन किया जाता है कि इस प्रकार की कोई भी वक्तव्य/बयान हमारे द्वारा किसी भी मीडियाकर्मी/किसी अन्य व्यक्ति को नहीं दिये गये हैं।

ह० अपठनीय
(डा० मो० जुबैर)
चिकित्साधिकारी
अधिकारी

ह०अपठनीय
(डा० दशरथ सिंह)
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ह०अपठनीय
(डा० मनोज कुमार शुक्ला)
उपमुख्य चिकित्सा

8. The impugned FIR No. 27 of 2021, under Section 153-B and 505 (2) IPC was registered on 31.01.2021 at 00.59 on a complaint made by the respondent no. 3. The FIR was lodged with the allegations that the petitioner by way of the aforementioned tweet, sought to provoke the masses, spread riot, tarnish the image of medical officers by proving wrong to the panel of Medical Officers and disturb law and order and though the doctors who performed the postmortem denied that they have told the victim's family that the cause of the death was bullet injuries but the petitioner no.1 did not delete the tweet. The petitioner no. 2, who is author of the news report shared by the petitioner no.1 on tweeter, was later on added in the FIR, which was originally registered against the petitioner no.1. The FIR is extracted below:-

नकल तहरीर..... सेवा में, श्रीमान प्रभारी निरीक्षक, थाना सिविल लाइन्स, रामपुर। महोदय, सादर निवेदन इस प्रकार है कि प्रार्थी को सोशल मीडिया ट्विटर के माध्यम से संज्ञान में आया है कि सिद्धार्थ नाम व्यक्ति द्वारा सिद्धार्थ/एसवर्दराजन एकान्त से दिनांक 30.01.2021 को समय प्रातः 10:08 बजे पोस्ट डाला गया है, जिसमें कहा गया है कि कृषि बिल के विरोध में दिल्ली में चल रहे धरना प्रदर्शन के दौरान नवरीत सिंह डिबडिया की मृत्यु कारित हुई थी जिसके पोस्टमार्टम में शामिल एक पैनल डाक्टर द्वारा नवरीत सिंह के दादा हरदीप सिंह को बयान दिया गया है कि नवरीत सिंह की मृत्यु गोली लगने से घायल होने के कारण हुई थी। चिकित्सक के हाथ अनुचित प्रभाव में बंधे हुए थे इसलिए वह कुछ नहीं कर सका। इस ट्वीट में जिस तथाकथित रिपोर्ट का हवाला दिया गया इस प्रकार से प्रस्तुत किया गया जिससे वह पोस्टमार्टम करने वाले चिकित्सक का कथन लगे, जिसे पढ़कर लोग दिग्भ्रमित हो जाये। इसके परिणामस्वरूप रामपुर के जन सामान्य में आक्रोश व्याप्त हो गया है एवं तनाव बढ़ गया है। यह पोस्ट निश्चित रूप से षडयन्त्र के अन्तर्गत जनसामान्य को क्षति कारित कर अनुचित लाभ कमाने के उद्देश्य से हिंसा भड़काने हेतु किया गया प्रतीत होता है। जब कि नवरीत सिंह पुत्र विक्रमजीत सिंह उर्फ साहब सिंह निवासी ग्राम डिबडिया थाना बिलासपुर जनपद रामपुर का पोस्टमार्टम जिला शासकीय चिकित्सालय रामपुर के शासकीय चिकित्सा अधिकारी के 03 सदस्यीय पैनल द्वारा किया गया था और उनके द्वारा पोस्टमार्टम रिपोर्ट सीलड बन्द लिफाफे में नियमानुसार पुलिस अधीक्षक एवं संबंधित प्रभारी निरीक्षक को प्रेषित की गयी है। चिकित्साधिकारी द्वारा इस सम्बन्ध में किसी भी व्यक्ति को कोई बयान नहीं दिया गया है पोस्टमार्टम की वीडियोग्राफी भी करायी गयी है। तीनों शासकीय चिकित्साधिकारियों द्वारा उक्त वायरल पोस्ट का खण्डन किया गया है। इसके बावजूद भी उक्त ट्वीट को अभी तक हटाया नहीं गया है। बिना सही तथ्यों की जानकारी किये, जानबूझकर सोशल मीडिया-ट्विटर के माध्यम भड़काऊ पोस्ट डालना, शासकीय चिकित्साधिकारियों का गलत बयान दर्शाकर मृतक नवरीत सिंह की मृत्यु गोली लगने का कारण कारित होना बताकर जन सामान्य को भड़काने, उपद्रव फैलाने, शासकीय चिकित्साधिकारियों एवं पैनल को गलत साबित कर उनकी छवि धूमिल करने के साथ ही शान्ति एवं कानून व्यवस्था को बिगाड़ने का भरसक प्रयास किया गया है। उक्त कृत्य धारा 505 आई०पी०सी० एवं 66 ए० आईटीएक्ट 2008 के अन्तर्गत गम्भीर अपराध है। अतः श्रीमान जी से प्रार्थना है कि प्रथम सूचना रिपोर्ट दर्ज कर संबंधित के विरुद्ध कानूनी कार्यवाही करने की कृपा करें। दिनांक 30.01.2021 sd-अंग्रेजी Sanju प्रार्थी संजू तुरैहा पुत्र जीवाराम निवासी पनबडिया थाना सिविल लाइन्स रामपुर। मो० 9149060025 नोट:- मैं सीसी1466 विपिन कुमार प्रमाणित करता हूँ कि प्रार्थना पत्र की नकल कम्प्यूटर पर शब्द ब शब्द बोल बोलकर का० 1465 शर्वेन्द्र से टाईप करायी गयी।"

9. The aforesaid FIR was lodged under section 153-B and 505 (2) IPC, which are extracted below for ready reference:-

“153-B. Imputations, assertions prejudicial to national integration.—(1) *Whoever, by words either spoken or written or by signs or by visible representations 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 and 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, 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.

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 illwill 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.”*

10. For constituting an offence against a person under Section 153-B IPC there should be words either spoken or written or signs or visible representations by a person on account of which any class of persons can not 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 or uphold the sovereignty and integrity of India or on account of various factors mentioned therein be denied or deprived of their rights as citizens of India or such assertion, counsel, plea or appeal causes or likely to cause disharmony or feelings of enmity or hatred or ill will between such members and other persons.

11. Similarly for constituting an offence under Section 505 (2) IPC, it refers to a person making, publishing or circulating any statement or report containing rumour or alarming news. Thereafter, it refers to the intent of the person which should be to create or promote and then refers to the harm-based element, that is, likely to create or promote on the ground of religion, race, place of birth, residence, language, cast, etc., feeling of enmity, hatred or ill-will between different religions, racial language, religious groups or castes or communities, etc. Unless the aforesaid ingredients are fulfilled the offences under sections 153-B and 505 (2) can not be made out.

12. The Hon'ble Supreme Court, in the case of **Amish Devgan Vs. Union of India and Others; (2021) 1 SCC 1**, has held that a publication which contains unnecessary asides which appear to have no real purpose other than to disparage will tend to evidence that the publications were written with a malafide intention. However, opinions may not reflect malafide intention. It has further been held that dissent and criticism of the elected government's policy, when puissant, deceptive or even false would be ethically wrong, but would not invite penal action. It has also considered that as to what will be the impact of statement or impact and authority of a reasonable person. The relevant paragraphs-70, 71 & 76 to 78 are extracted below:-

“70. Manzar Sayeed Khan, taking note of the observations in Bilal Ahmad Kaloo, records that common features of Section 153A. And 505 (2) being promotion of feeling of enmity, hatred or ill-will 'between different' religious or racial or linguistic or regional groups or castes or communities, involvement of at least two groups or communities is necessary. Further, merely inciting the feeling of one community or group without any reference to any other community or group would not attract either provision. Definition of 'hate speech' as expounded by Andrew F. Sellars prescribes that hate speech should target a group or an individual as they relate to a group.

71. The Preamble to the Constitution consciously puts together fraternity assuring dignity of the individual and the unity and integrity of the nation. Dignity of individual and unity and integrity of the nation are linked, one in the form of rights of individuals and other in the form of individual's obligation to others to ensure unity and integrity of the nation. The unity and integrity of the nation cannot be overlooked and slighted, as the acts that 'promote' or are 'likely' to 'promote' divisiveness, alienation and schematism do directly and indirectly impinge on the diversity and pluralism, and when they are with the objective and intent to cause public disorder or to demean dignity of the targeted groups, they have to be dealt with as per law. The purpose is not to curtail right to expression and speech, albeit not gloss over specific egregious threats to public disorder and in particular the unity and integrity of the nation. Such threats not only insidiously weaken virtue and superiority of diversity, but cut-back and lead to demands depending on the context and occasion, for suppression of freedom to express and speak on the ground of reasonableness. Freedom and rights cannot extend to create public disorder or armour those who challenge integrity and unity of the country or promote and incite violence. Without acceptable public order, freedom to speak and express is challenged and would get restricted for the common masses and law-abiding citizens. This invariably leads to State response and, therefore, those who indulge in promotion and incitement of violence to challenge unity and integrity of the nation or public disorder tend to trample upon liberty and freedom of others.

76. Persons of influence, keeping in view their reach, impact and authority they yield on general public or the specific class to which they belong, owe a duty and have to be more responsible. They are expected to know and perceive the meaning conveyed by the words spoken or written, including the possible meaning that is likely to be conveyed. With experience and knowledge, they are expected to have a higher level of communication skills. It is reasonable to hold that they would be careful in using the words that convey their intent. The reasonable-man's test would always take into consideration the maker. In other words, the expression 'reasonable man' would take into account the impact a particular person would have and accordingly apply the standard, just like we substitute the reasonable man's test to that of the reasonable professional when we apply the test of professional negligence. 98 This is not to say that persons of influence like journalists do not enjoy the same freedom of speech and expression as other citizens, as this would be grossly incorrect understanding of what has been stated above. This is not to dilute satisfaction of the three elements, albeit to accept importance of 'who' when we examine 'harm or impact element' and in a given case even 'intent' and/or 'content element'.

77. Further, the law of 'hate speech' recognises that all speakers are entitled to 'good faith' and '(no)-legitimate purpose' protection. 'Good faith' means that the conduct should display fidelity as well as a conscientious approach in honouring the values that tend to minimise insult, humiliation or intimidation. The latter being objective, whereas the former is subjective. The important requirement of 'good faith' is that the person must exercise prudence, caution and diligence. It requires due care to avoid or minimise consequences. 'Good faith' or 'no legitimate purpose' exceptions would apply with greater rigour to protect any genuine academic, artistic, religious or scientific purpose, or for that matter any purpose that is in public interest, or publication of a fair and accurate report of any event or matter of public interest. Such works would get protection when they were not undertaken with a specific intent to cause harm. These are important and significant safeguards. They highlight importance of intention in 'hate speech' adjudication. 'Hate speech' has no redeeming or legitimate purpose other than hatred towards a particular group. A publication which contains unnecessary asides which appear to have no real purpose other than to disparage will tend to evidence that the publications were written with a mala fide intention. However, opinions may not reflect mala fide intention.

78. The present case, it is stated, does not relate to 'hate speech' causally connected with the harm of endangering security of the State, but with 'hate speech' in the context of clauses (a) and (b) to sub-section (1) of Section 153A, Section 295A and sub-section (2) to Section 505 of the Penal Code. In this context, it is necessary to draw a distinction between 'free speech' which includes the right to comment, favour or criticise government policies; and 'hate speech' creating or spreading hatred against a targeted community or group. The former is primarily concerned with political, social Racial and Religious Tolerance, 2001 (Victoria, Australia) and economic issues and policy matters, the latter would not primarily focus on the subject matter but on the substance of the message which is to cause humiliation and alienation of the targeted group. The object of criminalising the latter type of speech is to protect the dignity (as explained above) and to ensure political and social equality between different identities and groups regardless of caste, creed, religion, sex, gender identity, sexual orientation, linguistic preference etc. Freedom to express and speak is the most important condition for political democracy. Law and policies are not democratic unless they have been made and subjected to democratic process including questioning and criticism. Dissent and criticism of the elected government's policy, when puissant, deceptive or even false would be ethically wrong, but would not invite penal action. Elected representatives in power have the right to respond and dispel suspicion. The 'market place of ideas' and 'pursuit of truth' principle are fully applicable. Government should be left out from adjudicating what is true or false, good or bad, valid or invalid as these aspects should be left for open discussion in the public domain. This justification is also premised on the conviction that freedom of speech serves an indispensable function in democratic governance without which the citizens cannot successfully carry out the task to convey and receive ideas. Political speech relating to government policies requires greater protection for preservation and promotion of democracy. Falsity of the accusation would not be sufficient to constitute criminal offence of 'hate speech'."

13. The Hon'ble Supreme Court, in the case of **Patricia Mukhim Vs. State of Meghalaya and Others; 2021 SCC Online SC 258**, has held that 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 Hon'ble Supreme Court regarding right to freedom of speech has held as under in paragraph 14:-

"14. India is a plural and multicultural society. The promise of liberty, enunciated in the Preamble, manifests itself in various provisions which outline each citizen's rights; they include the right to free speech, to travel freely and settle (subject to such reasonable restrictions that may be validly enacted) throughout the length and breadth of India. At times, when in the legitimate exercise of

such a right, individuals travel, settle down or carry on a vocation in a place where they find conditions conducive, there may be resentments, especially if such citizens prosper, leading to hostility or possibly violence. In such instances, if the victims voice their discontent, and speak out, especially if the state authorities turn a blind eye, or drag their feet, such voicing of discontent is really a cry for anguish, for justice denied – or delayed. This is exactly what appears to have happened in this case.”

14. The Hon'ble Supreme Court, in the Case of **Vinod Dua vs Union Of India and Others; 2021 SCC OnLine SC 414**, had held that a citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder and that is only when the words or expressions have pernicious tendency or intention of creating public disorder or disturbance of law and order that Sections 124-A and 505 of the IPC must step in.

15. The word 'Incitement' has been considered by the Hon'ble Supreme Court in the Case of **Amish Devgan Vs. Union of India and Others (Supra)**. The instigation must necessarily and specifically be suggestive of the consequences and sufficient certainty to incite the consequences must be capable of being spelt out to be incitement. The word 'Promote' does not imply mere describing and narrating a fact, or giving opinion, criticising the point of view or actions of another person. It requires that the speaker should actively incite the audience to cause public disorder. This active incitement can be gauged by the content of the speech, the context and surrounding circumstances and the intent of the speaker. However, in case the speaker does not actively incite the descent into public disorder and is merely pointing out why a certain person or group is behaving in a particular manner, what are their demands and their point of view or when the speaker interviews such person or group, it would be a passive delivery of facts and opinions which may not amount to promotion. In such circumstances it can not be said that the news was published to create nuisance or riot and incite the people.

16. Adverting to the facts of this case, the FIR was lodged alleging therein that the petitioners by publication of the alleged news and the aforesaid tweet sought to provoke the masses, spread riot, tarnish the image of medical officers by proving wrong to the panel of Medical Officers and disturb law and order and though the doctors who performed the postmortem denied that they have told the victim's family that the cause of the death was bullet injuries but the petitioner no.1 did not delete the tweet. Perusal of the publication made by the petitioners indicate that it mentions the fact of incident, thereafter the statement of the family members regarding incident and alleged information given by the doctors to him, denial of the U.P. Police and the fact as to what happened that day. This publication was made on 30.01.2021 at 10.08 A.M. and on the very same day a clarification of the three doctors was issued by Rampur Police at 04:39 PM, immediately thereafter at 04:46 PM, the same was also published by the petitioners. The aforesaid news items does not disclose that any opinion was expressed by the petitioners with consequences thereof, therefore this Court does not find any opinion or assertion on the part of the petitioners which may have the effect of provoking or inciting the people. Nothing was also brought before this court to indicate that there was any

disturbance or riot which may have any bearing on public disorder on account of the publication of news/ tweet of the petitioners.

17. The Hon'ble Supreme Court in the case of **Niharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others; 2021 SCC OnLine SC 315** has recorded its conclusions in regard to quashing of the F.I.R. / criminal proceedings, according to which the F.I.R. can be quashed on the parameters laid down in the case of **R.P. Kapoor Vs. State of Punjab; AIR 1960 SC 866** and **State of Haryana Vs. Bhajan Lal; 1992 Supp (1) SCC 335**. The cases in which the F.I.R. / complaint can be quashed have been identified in paragraph 102 of **Bhajan Lal (Supra)** which is extracted below:-

“**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 F.I.R. 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 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.”

18. In view of above this court is of the view that since the allegations made in the FIR does not disclose the commissioning of offences under Sections 153-B and 505 (2) IPC, therefore, it is not sustainable in the eyes of law and is liable to be quashed. The FIR is accordingly quashed. The writ petition is **allowed**. No order as to costs.