

**IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL WRIT PETITION NO.71 OF 2020**

SUDHEER RIKHARI,  
s/o Gopal Datt Rikhari,  
Age 36 years, Indian National,  
R/o D 44, Pandav Nagar,  
Delhi 110092

... Petitioner.

**VS.**

1. STATE OF GOA,  
Through the Public Prosecutor,  
High Court of Bombay at Goa,  
Panaji – Goa.

2. POLICE INSPECTOR  
Panaji Police Station,  
Panaji – Goa.

3. K. VENKAT KRISHNA,  
Major of age, Advocate,  
r/o S-221, Second floor,  
Greater Kailash Part-II,  
New Delhi – 110048  
Ph. No. 9560608924

... Respondents.

**WITH**

**CRIMINAL WRIT PETITION NO.72 OF 2020**

NIKHIL VASUDEVAN,  
s/o Pakaravoor Vasudevan,  
Age 36 years, Indian National,  
R/o 103A, Kailash Tower, Chandan Colony  
Saiyad Ul Ajaib Village,  
Sainik Farm, New Delhi  
Delhi 110030

... Petitioner.

**VS.**

1. STATE OF GOA,  
Through the Public Prosecutor,

High Court of Bombay at Goa,  
Panaji – Goa.

2. POLICE INSPECTOR  
Panaji Police Station,  
Panaji – Goa.

3. K. VENKAT KRISHNA,  
Major of age, Advocate,  
r/o S-221, Second floor,  
Greater Kailash Part-II,  
New Delhi – 110048  
Ph. No. 9560608924

... Respondents.

**WITH**  
**CRIMINAL WRIT PETITION NO.73 OF 2020**

SUBHANSHU SINGH,  
s/o Jugendra Singh,  
Age 28 years, Indian National,  
R/o B-38, Second Floor,  
Fateh Nagar, Tilak Nagar  
Delhi - 110018

... Petitioner.

**VS.**

1. STATE OF GOA,  
Through the Public Prosecutor,  
High Court of Bombay at Goa,  
Panaji – Goa.

2. POLICE INSPECTOR  
Panaji Police Station,  
Panaji – Goa.

3. K. VENKAT KRISHNA,  
Major of age, Advocate,  
r/o S-221, Second floor,  
Greater Kailash Part-II,  
New Delhi – 110048  
Ph. No. 9560608924

... Respondents.

**WITH**  
**CRIMINAL WRIT PETITION NO.74 OF 2020**

SUMANT BALAKRISHNAN,  
Son of C. Balakrishnan,  
Aged 35 years, married,  
Indian National,  
R/o 4367, Sector B, Pocket 5 & 6,  
Vasant Kunj, New Delhi.

... Petitioner.

**VS.**

1. STATE OF GOA,  
Through the Public Prosecutor,  
High Court of Bombay at Goa,  
Panaji – Goa.

2. POLICE INSPECTOR  
Panaji Police Station,  
Panaji – Goa.

3. K. VENKAT KRISHNA,  
Major of age, Advocate,  
r/o S-221, Second floor,  
Greater Kailash Part-II,  
New Delhi – 110048  
Ph. No. 9560608924

... Respondents.

**WITH**  
**CRIMINAL WRIT PETITION NO.75 OF 2020**

NIRMALA RAVINDRAN,  
Daughter of Sushila Ravindran,  
Aged 45 years, Indian National,  
R/o 1490, E Block AECS Layout,  
Bangalore - 37

... Petitioner.

**VS.**

1. STATE OF GOA,  
Through the Public Prosecutor,  
High Court of Bombay at Goa,  
Panaji – Goa.

2. POLICE INSPECTOR  
Panaji Police Station,  
Panaji – Goa.

3. K. VENKAT KRISHNA,  
Major of age, Advocate,  
r/o S-221, Second floor,  
Greater Kailash Part-II,  
New Delhi – 110048  
Ph. No. 9560608924

... Respondents.

**WITH**  
**CRIMINAL WRIT PETITION NO.76 OF 2020**

JAGTINDER SINGH,  
s/o Jagmail Singh,  
Age 29 years, Indian National,  
R/o H-3 Type 2, New Police Line,  
Kingsway Camp, Delhi 110009

... Petitioner.

**VS.**

1. STATE OF GOA,  
Through the Public Prosecutor,  
High Court of Bombay at Goa,  
Panaji – Goa.

2. POLICE INSPECTOR  
Panaji Police Station,  
Panaji – Goa.

3. K. VENKAT KRISHNA,  
Major of age, Advocate,  
r/o S-221, Second floor,  
Greater Kailash Part-II,  
New Delhi – 110048  
Ph. No. 9560608924

... Respondents.

**WITH**  
**CRIMINAL WRIT PETITION NO.77 OF 2020**

SHIVA PATHAK,  
D/o Chandra Pathak,  
Aged 40 years, married,  
Indian National,  
R/o G – 1006,  
Rohan Vasanta Vartut Main Road,  
Bangalore - 37

... Petitioner.

**VS.**

1. STATE OF GOA,  
Through the Public Prosecutor,  
High Court of Bombay at Goa,  
Panaji – Goa.

2. POLICE INSPECTOR  
Panaji Police Station,  
Panaji – Goa.

3. K. VENKAT KRISHNA,  
Major of age, Advocate,  
r/o S-221, Second floor,  
Greater Kailash Part-II,  
New Delhi – 110048  
Ph. No. 9560608924

... Respondents.

**WITH**  
**CRIMINAL WRIT PETITION NO.78 OF 2020**

ANIRBAN GHOSH,  
Son of Dr. A. B. Ghosh,  
Aged 37 years, married,  
Indian National,  
R/o 42, Pocket C-9, Sector 7,  
Rohini, Delhi - 85

... Petitioner.

**VS.**

1. STATE OF GOA,

Through the Public Prosecutor,  
High Court of Bombay at Goa,  
Panaji – Goa.

2. POLICE INSPECTOR  
Panaji Police Station,  
Panaji – Goa.

3. K. VENKAT KRISHNA,  
Major of age, Advocate,  
r/o S-221, Second floor,  
Greater Kailash Part-II,  
New Delhi – 110048  
Ph. No. 9560608924

... Respondents.

**WITH**  
**CRIMINAL WRIT PETITION NO.79 OF 2020**

VARUN GUPTA,  
s/o Rudra Daman Gupta,  
Age 30 years, Indian National,  
R/o Flat No A-1703, Tower A,  
Ajnara Homes, Sector 16 B,  
Greater Noida West, Pin 201306.

... Petitioner.

**VS.**

1. STATE OF GOA,  
Through the Public Prosecutor,  
High Court of Bombay at Goa,  
Panaji – Goa.

2. POLICE INSPECTOR  
Panaji Police Station,  
Panaji – Goa.

3. K. VENKAT KRISHNA,  
Major of age, Advocate,  
r/o S-221, Second floor,  
Greater Kailash Part-II,  
New Delhi – 110048  
Ph. No. 9560608924

... Respondents.

Mr. Shivan Desai, Advocate for the Petitioners.

Mr. Pravin Faldessai, Additional Public Prosecutor for the State.

**Coram: M.S. SONAK &  
SMT. M.S. JAWALKAR, JJ.**

**Reserved on: 06 April 2021**

**Pronounced on: 09 April, 2021**

**JUDGMENT (PER M.S. SONAK, J):**

Heard Mr. Shivan Desai for the Petitioners and Mr. Pravin Faldessai, learned Additional Public Prosecutor for the State in all these Petitions.

2. Learned Counsel for the parties agree that all these Petitions raise common issues of law and fact and therefore, can be disposed of by a common Judgment and Order.

3. In these matters, we had directed the impleadment of K. Venkat Krishna, the complainant as Respondent No.3. This matter was adjourned on some occasions to ensure that service is complete on Respondent No.3. Despite service, however, Respondent No.3 has chosen not to appear in these Petitions. The notice/ orders had made it clear that these Petitions would be disposed of finally at the stage of admission itself. The Petitions were taken up for final disposal after service was complete upon Respondent No.3 and even the affidavit to that effect was filed by the Petitioners.

4. The Petitioners are members of an art-rock live performance

project known as “*Dastaan LIVE*”. This band performs live on stage and tours India for its performances. The Petitioners claim that the said band is driven by several influential poets and writers from Faiz Ahmed Faiz to Baba Nagarjuna, to Sahir Ludhianvi to Nazeer Akbarabadi, and has composed their lyrics using progressive rock and shades of folk music to create an audio-visual live performance.

5. The Petitioners on the night of 17.12.2019 were performing live at the Serendipity Arts Festival, 2019, at Campal, Panaji, Goa. As a part of the live performance, the said band played their set-list of eight songs which were performed in various cities around India, unhindered, till then. One such song performed by the Petitioners' band was the “*Mantra Kavita*” by Vaidyanath Misra (widely known as Baba Nagarjun), which was originally composed in the year 1969. The Petitioners have stated on oath that the Poet Shri Vaidyanath Misra @ Baba Nagarjun is a highly acclaimed poet who has received two Sahitya Akademy Awards from the Government of India.

6. The Petitioners have pleaded that on the next day of their performance, i.e. on 18.12.2019, some of them i.e. Anirban Ghosh, Sumant Balkrishnan, Ms. Shiva Pathak, and Ms. Nirmala Ravindran were called to the Panaji Police Station and were informed that some person had complained about their band. They were informed that they were called to the Police Station to issue an apology.

7. The Petitioners have pleaded that the aforesaid four persons, including two women, reported to the Police Station, intending to

cooperate with the Police. The Police, however, placed these four persons including the two women under arrest, informing them that an offense under section 295-A of the IPC r/w section 34 of the IPC was registered against them based on a complaint lodged by one K. Venkat Krishna (Respondent No.3 herein).

8. The Petitioners have pleaded that the arrested Petitioners were eventually released on bail and the Petitioners who were yet to be arrested secured anticipatory bail.

9. The Petitioners by instituting these Petitions, have sought for quashing of FIR No.268/2019 dated 18.12.2019 alleging that the Petitioners have committed an offense under section 295-A r/w section 34 of the IPC. The Petitioners contend that the complaint made by Respondent No.3 does not disclose the commission of any offenses under section 295-A r/w section 34 of the IPC and therefore, this is a case of abuse of the criminal process warranting interference by invoking the provisions of section 482 of the Cr.P.C. and Article 226 of the Constitution of India.

10. The Petitioners have pleaded that their band was only performing their own musical adaptation of the poem composed by Shri Vaidyanath Misra @ Baba Nagarjun and even the lyrics were not modified by them, in the least. The Petitioners have pleaded that Shri Vaidyanath Misra @ Baba Nagarjun composed this poem in the year 1969 and various artists have given their own musical adaptation to this composition. The Petitioners have claimed that this composition is said to be the grand and

nihilistic climax to this poet's earlier poem.

11. The Petitioners have pleaded that the alacrity and the undue haste in registering the FIR give the Petitioners reason to believe that both the lodging as well as registering of this FIR was driven by political interest and/or for collateral purposes and/or with malicious intent to damage the band's reputation and to curb free speech and artistic intent/ creative capital.

12. The Petitioners have also placed on record the entire text of the “*Mantra Kavita*” by Shri Vaidyanath Misra @ Baba Nagarjun accompanied by a certificate under section 65-B of the Evidence Act, 1872. This certifies to the computer printout of the composition, the extract of which was taken from “<http://kavitakosh.org/kk>” and printed directly from the website. The certificate complies with other requirements of section 65-B of the Evidence Act.

13. Mr. Shivan Desai, the learned Counsel for the Petitioners submits that the complaint of Respondent No.3 does not even remotely disclose the ingredients of section 295-A r/w section 34 of the IPC. He submitted that there are no allegations of deliberate and malicious intent of outraging the religious feelings of any class of citizens of India or otherwise insult or attempt to insult the religion or religious beliefs of that class. He submits that the complainant has attempted to misinterpret or in any case take out of context the line from the composition and allege “*blasphemy*”. The complainant, by again taking a line out of context has claimed that the same has hurt the sentiment of

“*hundred crores of India and few million abroad*”. Mr. Desai submitted that the registering of the FIR with such haste based upon such a frivolous complaint amounts to a clear abuse of the criminal process. He relies on *Ramji Lal Modi vs. The State of U.P.*<sup>1</sup>, *Mahendra Singh Dhoni vs. Yerraguntla Shyamsundar and Ors.*<sup>2</sup>, *Devidas Ramachandra Tuljapurkar vs. State of Maharashtra and Ors.*<sup>3</sup>, *Arnab Ranjan Goswami vs. State of Maharashtra and Ors.*<sup>4</sup> and *Indibly Creative Private Limited and Ors. vs. Government of West Bengal and Ors.*<sup>5</sup> in support of his submissions.

14. Mr. Faldessai, the learned Additional Public Prosecutor submitted that the complaint had disclosed the commission of an offense under section 295-A r/w section 34 of the IPC. He submitted that because further proceedings were stayed by this Court, the investigating authorities could not gather material on the aspect of “*deliberate and malicious intention*”. He submits that the burden is on the Petitioners to explain as to why they chose this particular composition and why they contend that they did not have any deliberate or malicious intention of outraging the religious feelings of the Hindus. He submits that “OM” is quite sacred to the Hindus and if the same is recited in a negative narrative or clubbed with the words or phrases “*Ullu ka patthā*”, then, the same amounts to insulting religion and religious beliefs. He submits that there is no abuse involved and these petitions may be dismissed with an opportunity for the Petitioners to face trial and prove their innocence.

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<sup>1</sup> AIR 1957 SC 620

<sup>2</sup> AIR 2017 SC 2392

<sup>3</sup> AIR 2015 SC 2612

<sup>4</sup> 2020 SCC OnLine Bom 732

<sup>5</sup> (2020) 12 SCC 436

He submits that these Petitions are quite premature and if based on investigation, the Police agencies are satisfied that there is no case for filing a charge-sheet, they will not file any charge-sheet. He however submits that the Petitions, being premature, may now be dismissed so that law can take its course. He submitted that the decisions relied upon by Mr. Desai turn on their facts and do not apply to the present matter. He, therefore, submitted that all these Petitions may be dismissed.

15. The rival contentions now fall for our determination.

16. The Petitioners, as noted earlier, are a part of a band which, in the course of their live performance in Goa on 17.12.2019, presented a musical adaptation of "*Mantra Kavita*" composed by Shri Vaidyanath Misra @ Baba Nagarjun. There was no dispute raised that this poet was an acclaimed poet having received two Sahitya Akademy Awards from the Government of India. There was no allegation either in the complaint or by filing any return to these Petitions that the Petitioners had, in any manner, tampered with the lyrics of the "*Mantra Kavita*". There was also no dispute raised about the extract of the entire composition as downloaded from the internet by the Petitioners and produced on record under cover of a certificate under section 65-B of the Evidence Act, 1872. The complainant, when he lodged his complaint on 18.12.2019 had not even bothered to supply the full extract of that composition to the Police authorities. Even the Police authorities, registered the FIR, literally the minute the same was lodged, perhaps, without even bothering to either read the complaint or the provisions of

section 295-A of the IPC. The FIR records that the same was lodged at 13:17 hours on 18.12.2019 and the same recorded also at 13:17 hours on the same date. The GD Reference Entry No. is 57 and the time indicated against the same is "13:17:53 hours".

17. The complaint dated 18.12.2019, based upon which the aforesaid FIR came to be registered is transcribed below in its entirety for convenience of reference.

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18/12/2019

Panji, Goa

To,  
The Station Officer  
Panji Police Station  
Goa,

*Re: In continuation to my complaint over telephone  
Sub: complaint against the 'Group Dastaan' who played a  
concert in Panji*

*Dear Sir,*

*I, K. Venkat Krishna, Advocate, Supreme Court of India, having residential address at S-221, second floor, Greater Kailash Part-11, New Delhi hearby state as under:*

*(a) I was on a visit to Goa and Panaji on holiday and visiting different place of interest and come to know about a program in football grounds. I have been to concert on Sunday, Monday and Tuesday.*

*(b) The programs on Monday & Sunday was well organized and has clean entertainment.*

*(c) To our surprises on Tuesday we found a narrative being set - up against the government in power and trying to play victim card. As opinion maker myself I felt they were opining on government but to surprise they began chanting 'OM' a symbol of my faith in negative narrative and*

*ultimately abusing people chanting the OM and following to Hindu stream has Ullu ke patta. They abuse the practice by words with picture of different walks of life and what they have said and did was blasphemy of my religion and sentiment of hundred crores of India and few million abroad.*

*I request you to take stringent action against the group Dastaan for mususing the platform given to them to perform for entertainment. I will be available to any help or need on the phone number 9560608924 for further enquiry.*

*Yours truly*

*Sd/-*

*(K. Venkat Krishna)*

*Cc (i) Hon'ble chief minister Goa*

*(ii) Hon'ble home minister of India”*

18. As noted earlier, the Petitioners have pleaded that based upon the aforesaid complaint and the FIR, some of the Petitioners were called to the Police Station “to issue an apology”. This categorical averment in the Petitions has not been denied by the Respondents by filing a return. According to us, the Police authorities cannot call citizens to the Police Station and demand apologies of this nature. As if that was not sufficient, the Police, placed some of the Petitioners under arrest in the late evening of 18.12.2019, thereby forcing them to seek bail. Some of the other Petitioners had to secure anticipatory bail to avoid physical arrest. Having regard to the decision of the Hon'ble Supreme Court in the case of *Arnesh Kumar vs. State of Bihar and another*<sup>6</sup>, we think that there was no justification whatsoever for arresting the Petitioners

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<sup>6</sup> 2014 8 SCC 273

who were the members of this band and who have been making such presentations all over the Country, unhindered and unmolested.

19. In the context of arrests concerning offenses punishable with imprisonment extendable to seven years the Hon'ble Supreme Court has laid down guidelines, which, according to us, were completely ignored by the police authorities. On the effect of arrest, the Hon'ble Supreme Court in paragraph 5 has made the following significant observations:

*“5. Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.*

20. Similarly, in *Jogindar Kumar vs. State of U.P.*<sup>7</sup>, the Hon'ble Supreme Court has held that the quality of a nation's civilisation can be largely measured by the methods it uses in the enforcement of criminal law. No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to

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<sup>7</sup> 1994 4 SCC 260

justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made routinely on a mere allegation of commission of an offense made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even to the need to effect an arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offense. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offenses, an arrest must be avoided if a police officer issues notice to a person to attend the Station House and not to leave the station without permission would do.

21. The aforesaid observations aptly apply to how some of the Petitioners were arrested and dealt with by the police authorities. Based on a frivolous complaint, some of the Petitioners, who were only members of a band were incarcerated or forced to seek anticipatory bail.

22. According to us, based upon the complaint, which we have already adverted to, the police authorities were neither justified in registering the

FIR nor arresting any of the Petitioners disregarding the rulings of the Hon'ble Supreme Court in *Arnesh Kumar* (supra) and *Joginder Singh* (supra).

23. The Petitioners have produced on record the entire text of the composition of Shri Vaidyanath Misra @ Baba Nagarjun, the Sahitya Akademy Awardee poet accompanied by a certificate under section 65-B of the Evidence Act. The entire text of the composition is reproduced below, again for the convenience of reference.

“OM shbd hii brahm hai..  
 OM shbd, aur shbd, aur shbd, aur shbd  
 OM praNv, OM naad, OM mudraayen  
 OM vktavy, OM udgaar, OM ghoSNaaen  
 OM bhaaSN..  
 OM pravchn..  
 OM hunkaar, OM fTakaar, OM shiitkaar  
 OM fufufus, OM futkaar, OM chiitkaar  
 OM aasfaaln, OM ingit, OM ishaare  
 OM naare, aur naare, aur naare, aur naare  
  
 OM sb kuchh, sb kuchh, sb kuchh  
 OM kuchh nhiin, kuchh nhin, kuchh nhiin  
 OM ptthr pr kii doob, khragosh ke siing  
 OM nmk-tel-hldii-jiraa-hiing  
 OM moos kii leDii, kner ke paat  
 OM Daayn kii chiikh, aughD kii aTpT baat  
 OM koylaa-ispaaat-peTrol  
 OM hmii hm Thos, baakii sb fooTe Dhol  
 OM idmaannan, imaa aapH idmjyan, idan hviH  
 OM yjmaan, OM purohit, OM raajaa, OM kviH  
 OM kraantiH kraantiH srvgvankraantiH  
 OM shaantiH shaantiH shaantiH srvgyan shaantiH  
 OM bhraantiH bhraantiH bhraantiH srvgvan bhraantiH  
 OM bchaao bchaao bchaao bchaao  
 OM hTaaO hTaaO hTaaO hTaaO  
 OM gheraaO gheraaO gheraaO gheraaO  
 OM nibhaao nibhaao nibhaao nibhaao  
  
 OM dlon men ek dl apnaa di, OM  
 OM angiikraN, shuddhiikraN, raaSTrikraN  
 OM muSTiikraN, tuSTiikraN, puSTiikraN  
 OM aitraaj, aakSep, anushaasn  
 OM gddii pr aajnm vjraasn

*OM Tribyoonl, OM aashvaasn  
 OM guTnirapekS, sttaasaapekS joD-toD  
 OM chhl-chhand, OM mithyaa, OM hoDmhoD  
 OM bkvaas, OM udghaaTn  
 OM maaraN mohn uchchaaTn*

*OM kaalii kaalii kaalii mhaakaalii mhakaalii  
 OM maar maar maar vaar n jaay khaalii  
 OM apnii khushhaalii  
 OM dushmnon kii paamaalii  
 OM maar, maar, maar, maar, maar, maar, maar  
 OM apojiishn ke munD bne tere gle kaa haar  
 OM ain hriin kliin hoon aa~N  
 OM hm chbaayenge tilk aur gaandhii kii Taang  
 OM booDhe kii aankh, chhokrii kaa kaajl  
 OM tulusiidl, bilyptr, chndn, rolii, akSt, gangaajl  
 OM sher ke daant, bhaaloo ke naakhoon, mrkT kaa fotaa  
 OM hmeshaa hmeshaa raaj kregaa meraa potaa  
 OM chhooH chhooH fooH fooH fT fiT fuT  
 OM shtruon kii chhaatii ar lohaa kuT  
 OM bhairon, bhairon, bhairon, OM bjrangblii  
 OM bandook kaa ToTaa, pistaul kii nlii  
 OM Dolr; OM roobl, OM paaunD  
 OM saaunD, OM saaunD, OM saaunD*

*OM OM OM  
 OM dhratii, dhratii, dhratii, vyom, vyom, vyom, vyom  
 OM aSTdhaatuon ke iinTo ke bhTTe  
 OM mhaamhim, mhamho ulloo ke pTThe  
 OM durgaa, durgaa, durgaa, taaraa, taaraa, taaraa  
 OM isii peT ke andr smaa jaay srvhaaraa  
 hriH OM ttst, hriH OM ttst”*

24. Now if the complaint which is the basis for the FIR is perused, it is apparent that the complainant has adverted to only one small portion of the composition and by interpreting the same or rather misinterpreting the same, made the following vague allegations, which, according to us, do not even remotely constitute the ingredients of Section 295-A of the IPC:

*“To our surprises on Tuesday we found a narrative being set - up against the government in power and trying to play victim card. As opinion maker myself I felt they were opining on government but to surprise they began chanting 'OM' a symbol of my faith in*

*negative narrative and ultimately abusing people chanting the OM and following to Hindu stream has Ullu ke patta. They abuse the practice by words with picture of different walks of life and what they have said and did was blasphemy of my religion and sentiment of hundred crores of India and few million abroad.”*

25. Section 295-A of the IPC reads as follows:-

*“[295A. 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 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.]”*

26. The allegations in the complaint, which constitute the basis for the FIR, even if accepted in their entirety, do not even remotely point out the ingredients of Section 295-A of IPC. In the first place, there are no allegations about any deliberate or malicious intentions of outraging the feelings of any class of citizens of India. There are no allegations of insult or attempts to insult the religion or the religious beliefs of that class. To simply allege that “OM” which is a symbol of the complainant's faith “in negative narrative” or “abusing people chanting the OM and followers to Hindu stream as Ullu ke Patta” is by no means sufficient to spell out the ingredients of Section 295-A of the IPC. Further, to allege “blasphemy of my religion and sentiment of hundred crores of India and few million abroad” also does not spell out the ingredients of Section

295-A of the IPC. Even Mr. Faldessai, the learned Additional Public Prosecutor conceded that “*blasphemy*” is not an offense under the Indian Penal Code as it now stands.

27. In the aforesaid circumstances, we are satisfied that the prosecution of the Petitioners in pursuance of such an FIR will amount to an abuse of the process of the Court. According to us, there was no justification whatsoever for the Police Inspector to hurriedly register such an FIR, possibly without even going into the complaint or for that matter the provisions of Section 295-A of the IPC. The Police authorities are expected to be quite sensitive in such matters, because, what is at stake is the freedom of speech and expression. Therefore, unless the complaint discloses the ingredients of the offense under section 295-A of IPC, it is not expected of the Police authorities to rush and register an FIR in such cases. In any case, there was no justification whatsoever to call some of the Petitioners to the Police Station and require them to apologize or to arrest some of the Petitioners, no sooner the FIR was registered.

28. In *Ramji Lal Modi* (supra), the constitutional validity of section 295-A was no doubt upheld by the Constitution Bench of the Hon'ble Supreme Court. But in so upholding the constitutional validity, the Constitution Bench made it clear that section 295-A of IPC does not penalize any and every act of insult or attempt to insult the religion or religious beliefs of a class of citizens but it penalizes only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the

deliberate and malicious intention of outraging the religious feelings of that class. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. In other words, the language employed in the section is not wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Article 19(1)(a) of the Constitution.

29. As noted earlier, in the complaint, there are not even any allegations of deliberate or malicious intention to outrage religious feelings of any class of persons. In the absence of such allegations, therefore; there was no justification whatsoever to register the FIR and to proceed against the Petitioners. The criminal machinery ought not to have been set into motion based upon such a complaint. This was indeed the abuse of the process, because, it is apparent that the Police authorities have not even taken cognizance of the legal position explaining the scope of section 295-A of IPC by the Constitution Bench of the Hon'ble Supreme Court in the case of *Ramji Lal Modi* (supra).

30. In *Mahendra Singh Dhoni* (supra), the allegation against the cricketer was that he posed for a magazine photograph/painting with the caption "*God of Big Deals*". There was a description underneath which had the characters of some advertisements. A complaint was filed

alleging offense under section 295-A of IPC but the Police authorities declined to register the FIR. The complainant, therefore, filed a complaint under section 200 of the Cr.P.C. before the Magistrate who issued the process to the cricketer. The Hon'ble Supreme Court quashed the process by referring to the decision of the Constitution Bench in *Ramji Lal Modi* (supra). In paragraph 7, this is what the Hon'ble Supreme Court observed:-

*“7. On a perusal of the aforesaid passages, it is clear as crystal that Section 295A does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of class of citizens. It penalise only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the Section. The Constitution Bench has further clarified that the said provision only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Emphasis has been laid on the calculated tendency of the said aggravated form of insult and also to disrupt the public order to invite the penalty.”*

31. In *Mahendra Singh Dhoni* (supra), the Hon'ble Supreme Court, before parting with the case, sounded a word of caution that the Magistrates who have been conferred with the power of taking cognizance and issuing summons are required to carefully scrutinize whether the allegations made in the complaint proceeding meet the basic ingredients of the offense; whether the concept of territorial jurisdiction

is satisfied; and further whether the Accused is really required to be summoned. This has to be treated as the primary judicial responsibility of the court issuing process.

32. According to us, even though the aforesaid observations were made in the context of Magistrate issuing summons in such matters, the observations will equally apply to Police authorities registering FIRs based on complaints that do not even meet with the basic ingredients of section 295-A of IPC. In this case, Police authorities, without even examining the complaint or for that matter the provisions of section 295-A, hurriedly registered the FIR and then proceeded to even arrest some of the Petitioners, possibly because they refused to apologize at the Police station. This is certainly not how the Police machinery should act in a matter of this nature.

33. In *Indibly Creative Private Limited* (supra), the allegation was that the State of West Bengal caused an utterly unlawful obstruction of the public exhibition of the Petitioner's Bengali feature film 'Bhobishyoter Bhoot'. Simply put, the Petitioner's grievance was summarized that the State of West Bengal was misusing police power and acting as a “*super-censor*” sitting atop the CBFC and is violating the petitioners' fundamental rights guaranteed under Articles 14, 19(1)(a), 19(1)(g) and 21 of the Indian Constitution through the Kolkata Police which is under the Department of Home.

34. The Hon'ble Supreme Court, allowed the petitions instituted under Article 32 of the Constitution of India with costs quantified at

Rs.20 lakhs by making the following observations, which, apply to the present case as well:-

*“46. Contemporary events reveal that there is a growing intolerance: intolerance which is unaccepting of the rights of others in society to freely espouse their views and to portray them in print, in the theatre or in the celluloid media. Organised groups and interests pose a serious danger to the existence of the right to free speech and expression. If the right of the playwright, artist, musician or actor were to be subjected to popular notions of what is or is not acceptable, the right itself and its guarantee under the Constitution would be rendered illusory. The true purpose of art, as manifest in its myriad forms, is to question and provoke. Art in an elemental sense reflects a human urge to question the assumptions on which societal values may be founded. In questioning prevailing social values and popular cultures, every art form seeks to espouse a vision. Underlying the vision of the artist is a desire to find a new meaning for existence. The artist, in an effort to do so, is entitled to the fullest liberty and freedom to critique and criticize. Satire and irony are willing allies of the quest to entertain while at the same time to lead to self-reflection. We find in the foibles of others an image of our own lives. Our experiences provide meaning to our existence. Art is as much for the mainstream as it is for the margins. The Constitution protects the ability of every individual citizen to believe as much as to communicate, to conceptualize as much as to share.*

*47. Public power must be conscious of the fact that ours is a democracy simply because the Constitution recognizes the inalienable freedoms of every citizen. Power has been entrusted to the state by the people under a written Constitution. The State holds it in trust and its exercise is accountable to the people. The State does not entrust freedoms to the people: the freedoms which the Constitution recognizes are inseparable from our existence as human beings. Freedom is the defining feature of human existence. Freedoms are not subject to power. Public power is assigned by the people to Government. Ours is a controlled Constitution, a Constitution which recognizes the fullest element*

*of liberty and freedom and of the answerability of power to freedom.*

*48. The views of the writer of a play, the metre of a poet or the sketches of a cartoonist may not be palatable to those who are criticized. Those who disagree have a simple expedient: of not watching a film, not turning the pages of the book or not hearing what is not music to their ears. The Constitution does not permit those in authority who disagree to crush the freedom of others to believe, think and express. The ability to communicate 'ideas' is a legitimate area of human endeavor and is not controlled by the acceptability of the views to those to whom they are addressed. When the ability to portray art in any form is subject to extra-constitutional authority, there is a grave danger that fundamental human freedoms will be imperiled by a cloud of opacity and arbitrary State behaviour."*

35. In *Arnab Ranjan Goswami* (supra), the Division Bench of this Court granted interim reliefs holding that section 295-A of IPC covers the offense of deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious feelings by words either spoken or written or by signs or by visible representations or otherwise.

36. The Division Bench referred to the decision of the Hon'ble Supreme Court in *Manzar Sayeed Khan vs. State of Maharashtra & Anr.*<sup>8</sup>, in which, the Hon'ble Supreme Court, referring to the provisions of section 153-A of IPC held that the prosecution has to prove prima facie the existence of *mens rea* on the part of the accused. The matter complained of as being within the ambit of Section 153A must be read as a whole. One cannot rely on strongly worded and isolated passages for

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<sup>8</sup> (2007) 5 SCC 1

proving the charge nor indeed can one take a sentence here and a sentence there and then connect them by a meticulous process of inferential reasoning. The Hon'ble Supreme Court also referred to its earlier decisions and observed that 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.

37. In the present case, the Respondent, has precisely chosen to take a sentence here and a sentence there or rather, a word here and a word there and on such basis filed a vague complaint which does not even spell out the basic ingredients of section 295-A of IPC. Besides, the Police authorities have completely ignored the dictum of the Hon'ble Supreme Court which provides that 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.

38. In *Maqbool Fida Husain v. Rajkumar Pandey*<sup>9</sup>, the Petitioner was charged with obscenity and hurting religious sentiments for his painting which depicted India as a nude woman with her hair flowing in the form of Himalayas. Sanjay Kishan Kaul, J (as His Lordship then was), upheld the artistic freedom of the painter, noting thus:

*“112. ... Pluralism is the soul of democracy. The right to dissent is the hallmark of a democracy. In real democracy the dissenter must feel at home and ought not to be nervously looking over his shoulder fearing captivity or bodily harm or economic and social*

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<sup>9</sup> 2008 SCC OnLine Del 562

*sanctions for his unconventional or critical views. There should be freedom for the thought we hate. Freedom of speech has no meaning if there is no freedom after speech. The reality of democracy is to be measured by the extent of freedom and accommodation it extends.”*

39. In *S. Tamilselvan vs. State of Tamil Nadu*<sup>10</sup>, the Division Bench of the Madras High Court speaking through Sanjay Kishan Kaul, J (as His Lordship then was) did not approve the action of the State officials in succumbing to the demands of extra-judicial elements and forcing the author to withdraw unsold copies of the book and to tender an apology. The Division Bench, after quoting the decision in *Maqbool Fida Husain* (supra), held that there was a requirement of positive measures of protection to be taken to protect free speech permissible under the law. The Division Bench made the following observations:-

*“180. ... In such simmering circumstances, it was the bounden duty of the State Government to ensure that the law and order situation does not go out of hand, but that ought not be achieved by placating anyone who seeks to take the law and order in his own hand at the cost of the person who has peacefully expressed his/her view. ...and the authorities really were not neutral in the episode, but were possibly more concerned with the law and order scenario, as opposed to the freedom of expression of a single individual.*

*181. ... We may also say that the State and the police authorities would not be the best ones to judge such literary and cultural issues, which are best left to the wisdom of the specialists in the field and thereafter, if need be, the Courts.”*

40. The decisions in *Maqbool Fida Husain* (supra) and *S. Tamilselvan*

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<sup>10</sup> 2016 SCC OnLine Mad 5960

(supra) were quoted with approval by the Hon'ble Supreme Court in *Indibly Creative Private Limited* (supra). The action of the Police authorities in the present case in registering the FIR and requiring the Petitioners to tender apology or to face the humiliation of arrest was contrary to the law laid down by the Hon'ble Supreme Court, in such matters.

41. In *State of Haryana vs. Brij Lal Mittal & Ors.*<sup>11</sup>, the Hon'ble Supreme Court has held that an FIR can be quashed if it does not disclose an offense and there is no need for any investigation or recording of any statement. The contention that because of the stay granted in the present proceedings, no further investigation could be carried out to ascertain whether the intention of the Petitioners was malicious or deliberate to outrage the religious feelings of any class is unacceptable. When there are no allegations in the very complaint about any acts on the part of the Petitioners being deliberate or malicious with the intent of outraging religious feelings of any class or community, there was no question of even registering the FIR and proceeding with the investigation.

42. According to us, this is a case where the complaint or the FIR does not disclose the commission of any offense. The basic ingredients necessary to invoke the provisions of section 295-B of the IPC are totally missing. Besides, we are satisfied that this is a case where the criminal process has been abused by the Respondents by registering the FIR based upon a vague complaint. The Petitioners were unnecessarily arrested

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<sup>11</sup> AIR 1992 SC 604

possibly because they refused to tender any apology at the Police Station. Some of the Petitioners were forced to seek anticipatory bail. The action of the Respondents was contrary to judicial precedents in matters of arrest or explaining the true scope of Section 295-A of IPC. There is merit in the submission of Mr. Desai that the FIR was registered hurriedly and possibly without even perusing the complaint or in any case the provisions of section 295-B of the IPC. Mr. Desai is quite right in his submission that this was an unwarranted assault on creativity and freedom of speech and expression itself.

43. For all the aforesaid reasons, we quash the impugned FIR No.268/2019 dated 18.12.2019 and make the Rule absolute in terms of prayer clause (a) in each of these Petitions.

44. In the fond hope that Respondents No.1 and 2 will not act similarly in the future, we refrain from imposing any costs in each of these Petitions.

**SMT. M.S. JAWALKAR, J**

**M. S. SONAK, J.**

jfd/-