AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 323 of 2021

- Dr. Raman Singh S/o Late Shri Vignaharan Singh, Aged About 68 Years R/o Maulshree Vihar, VIP Road, Raipur, District Raipur (Chhattisgarh) Pin 492002

---- Petitioner

Versus

1. State Of Chhattisgarh Through Chief Secretary, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur (Chhattisgarh) Pin 492002
2. Secretary, Department Of Home, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh. Pin 492002
3. Station House Officer, Police Station Civil Lines, Raipur, District Raipur Chhattisgarh
4. Mr. Akash Sharma, State President, National Student Union Of India, R/o Om Society, Sundar Nagar, Raipur, District Raipur (Chhattisgarh) 492007

---- Respondents

For Petitioner	:	Mr. Mahesh Jethmalani, Senior Advocate (through Video Conferencing), Mr. Vivek Sharma, Mr. Apoorv Kurup, Mr. Gary Mukhopadhyay, Ms. Ayushi Agrawal, Mr. Abhishek Gupta, Mr. Ravi Sharma and Mr. Neeraj Jain, Advocates.
For Respondents No. 1 to 3	:	Mr. S.C.Verma, Advocate General with Mr. Chandresh Shrivastava, Additional Advocate General.
For Respondent No. 4	:	None

WPCR No. 325 of 2021

- Dr. Sambit Patra S/o Shri Rabindranath Patra, Aged About 45 Years R/o. 1536, Deenanath Building, Chandrawal Road, Ghantaghar, New Delhi 110007, District : New Delhi, Delhi

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Versus

1. State Of Chhattisgarh Through Chief Secretary, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh. Pin 492002, District : Raipur, Chhattisgarh
2. Secretary, Department Of Home, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur (Chhattisgarh) Pin 492002, District : Raipur, Chhattisgarh
3. Station House Officer, Police Station Civil Lines, Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
4. Mr. Akash Sharma, State President, National Student Union Of India, R/o Om Society, Sundar Nagar, Raipur, District Raipur Chhattisgarh. 492007, District : Raipur, Chhattisgarh

---- Respondents

(Cause Title taken from Case Information System)

For Petitioner	:	Mr. Ajay Burman, Senior Advocate alongwith Mr. Neeraj Jain, Mr. Avadhesh Kumar Singh, Mr. Vivek Sharma, Mr. Gary Mukhopadhyay, Ms. Ayushi Agrawal and Mr. Abhishek Gupta, Advocates.
For Respondents No. 1 to 3	:	Mr. S.C.Verma, Advocate General with Mr. Chandresh Shrivastava, Additional Advocate General.
For Respondent No. 4	:	None
Date of Hearing	:	12.09.2023
Date of Order	:	20.09.2023

Hon'ble Mr. Ramesh Sinha, Chief Justice
Hon’ble Mr. N.K.Chandravanshi, Judge

C A V Order

Per Ramesh Sinha, Chief Justice

1. The petitioner (in WPCr No. 323 of 2021)has prayed for the following reliefs:

"i) Quash and set aside the FIR (No. 0215 of 2021) dated 19.05.2021 lodged at PS Civil Lines, District Raipur against the petitioner, and,

ii) Punish the Respondent No. 4, Mr. Akash Sharma u/s. 182 and 211 of the IPC for filing the false complaint recorded in FIR No. 0215 of 2021 dated 19.05.2021 lodged at PS Civil Lines, District Raipur, Chhattisgarh.

Iii) Punish the officers/personnel concerned of the respondents No. 1 – 3 for acting upon the false complaint of the Respondent No. 4 by lodging FIR No. 0215 of 2021 dated 19.05.2021 lodged at PS Civil Lines, District Raipur, Chhattisgarh and for taking consequent steps.

iv) Impose punitive and exemplary cost upon the Respondents for illegally prosecuting the petitioner.

v) Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case alongwith cost of the petition be awarded."

2. The petitioner (in WPCr No. 325 of 2021) has prayed for the following reliefs:

"i*) Quash and set aside the FIR (No. 0215 of 2021) dated 19.05.2021 lodged at Police Station Civil Lines, district Raipur against the petitioner for commission of offences under Section 504, 505 (1)(b), 505(1)(c), 469, 188 IPC and,*

ii) Punish the Respondent No. 4, Mr. Akash Sharma, u/s. 182 and 211 of the IPC for filing the false complaint recorded in FIR No. 0215 of 2021 dated 19.05.2021 lodged at PS Civil Lines, District Raipur, Chhattisgarh.

Iii) Punish the officers/personnel concerned of the Respondent Nos. 1-3 for acting upon the false complaint of the Respondent No. 4 by lodging FIR No. 0215 of 2021 dated 19.05.2021 lodged at PS Civil Lines, District Raipur, Chhattisgarh and for taking consequent steps.

iv) Impose punitive and exemplary costs upon the Respondents for illegally prosecuting the Petitioner.

v) Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case alongwith costs of the petition be awarded."

3. Since both the writ petition seeks to challenge FIR bearing Crime No. 0215 of 2021 dated 19.05.2021 registered against the petitioner-Dr. Raman Singh and the petitioner-Dr. Sambit Patra, they are being considered and decided by this common order.

4. The facts, in brief, as projected by the petitioner (in WPCr No. 323/2021) are that the petitioner-Dr. Raman Singh is a well-respected and leading member of society. He has been a former Union Minister and three-time Chief Minister of Chhattisgarh, having served in that office for over 15 years. During that time, the Petitioner was instrumental in numerous social welfare initiatives which were recognized and appreciated both, nationally and internationally For instance, the Petitioner helped establish one of the best performing public distribution systems (PDS) in India which was appreciated even by the Hon'ble Supreme Court, as well as many other transformative programs for the promotion of digital technology. agricultural loans, medical care, food security and the education of the girl-child He is now a Member of the Legislative Assembly of Chhattisgarh and one of the senior-most leaders of the opposition in the Chhattisgarh Vidhan Sabha. In addition, he currently serves as the National Vice-President of the Bharatiya Janata Party (BJP) i.e a national political party. The petitioner is therefore actively involved in national affairs, as well as those concerning the State of Chhattisgarh, and has devoted his life for the welfare of the people of India.

5. The petitioner in WPCr No. 325/2021, namely Dr. Sambit Patra is a well-respected and leading member of society. He is a Doctor by profession and was a former Medical Officer at Hindu Rao Hospital, Delhi. He is a member of the BJP and is presently serving as the National Spokesperson. He is actively involved in the national affairs and is directly concerned with the issues affecting the daily lives of people throughout the country. As a part of his duties as a National Spokesperson, he engages with the people of India through various social medial platforms including 'Twitter' to regularly share information on a range of issues that concern the welfare of Indians, both domestically and throughout the world.

6. On 18.05.2021, the petitioners came to know from the public domain that the Indian National Congress Party (for short, the Congress Party) had prepared a document titled "*Cornering Narendra Modi & BJP on COVID Mismanagement"* with instructions to embarrass and tarnish the image of the Central Government and the BJP. This document is popularly known as a "Congress Toolkit. The said document, inter-alia contains statements such as "Use the phrase 'Indian strain whenever talking of the new mutant Social media volunteers may call it "Modi strain". In Gujarat, use the distress of people to build anger against the Modi government in other States, build anger by arguing that Gujarat is getting special treatment" "Use phrases like Missing Amit Shah, Quarantined Jaishanker, Sidelined Rajnath Singh, Insensitive Nirmala Sitharaman etc." letters to Modi to be written at regular intervals with suggestions that are a good mix of emotionally appealing ideas among some common-sense suggestions", "Use dramatic pictures of funerals and dead bodies, which is already being done by foreign media. Such journalists can be facilitated by our local cadre in various districts to get

the right image and then their reporting may be magnified", "International media coverage by foreign correspondents in India can be tailored to exclusively focus on Modi and his mismanagement Liaise with foreign journalists...". As per various respectable media reports, including a report in 'India Today, the said Congress Toolkit was first posted on Twitter *i.e* in the public domain by a Twitter handle of one Team Bharat' on 18.05.2021.

7. The petitioners were immensely distressed and pained to see that at a time when the entire country was facing an unprecedented pandemic, the Congress Party was still only focused on misleading the people of this country for political gain. Therefore, at 4:42 p.m. on 18.05.2021, the petitioner-Dr. Raman Singh published a message on his Twitter handle @drramansingh, which reads as follows:

"कोरोना संकट के समय कांग्रेस की बिलो द बेल्ट राजनीति देखकर शर्म आती है। विदेशी मीडिया में देश को बदनाम करने @INCIndia कुंभ का दुष्प्रचार व जलती लाशों की फोटो दिखाने का षडयंत्र कर रही है। महामारी के साथ लडने के बजाय कांग्रेस लोगों को आपस में लडा रही है। #CongressToolkit Exposed"

This translates as follows In this time of Corona Crisis, it is shameful to see the below the belt politics of Congress. To discredit the country in the foreign media, @ INC India is conspiring propagate Kumbh and show photos of corpses. Instead of fighting against epidemic, Congress is provoking people to fight amongst each other #Congress ToolkitExposed."

8. On the same day, the petitioner-Dr. Sambit Patra published a message on his twitter handle @sambitswaraj, which reads as follows:

"Friends look at the #CongressToolkit in extending help to the needy during the Pandemic!

More of a PR exercise with the help of 'Friendly Journalists' & 'Influencers' than a soulful endeavor.

Read for yourselves the agenda of the Congress:

#CongressToolKitExposed"

9. Dr. Sambit Patra posted this message alongwith images of pages from the 'Congress Toolkit'.

10. The petitioners criticized the 'Congress Toolkit' in the twitter post/tweet because they earnestly and strongly believe that the Central Government is acting in the best interest of Indian citizens, and that intentionally misleading the public about the activities, works and policies of the Central Government for political gain is against the public interest and puts the Nation in great danger. The petitioners also believe that their role as a public representative is to help the people of India, distinguish between the truth and falsehood, and between facts and fiction In any event, the Twitter post/ tweet in question represented the personal views of the petitioners, which they are entitled to convey to all well meaning citizens in exercise of their fundamental right to free speech and expression.

11. Soon thereafter, on 18.05.2021 itself, one Akash Sharma i.e. the respondent No. 4 who is the State President for the National Students Union of India (NSUI) an affiliate of the Congress Party, filed a complaint with the police against the petitioners and certain others and this fact was publicized on the Twitter Handle @INCChhattisgarh of the Congress Party alongwith a photograph of the event. However, the aforesaid complaint was not taken on record. Instead, the respondent No. 4 filed an improved complaint on 19.05.2021 with the connivance of

the police to falsely implicate the petitioners. In this complaint, he falsely and maliciously alleged that the petitioners and certain named and unnamed individuals had forged the letter head of the All-India Congress Committee (AICC) Research Department and thereafter printed "false and fabricated content on the same, in order to share the forged/BJP manufactured document from their verified twitter handles and other social media platforms, with the intent to create communal violence, fueling hate and spreading fake news". The complaint also falsely and maliciously alleges that the petitioner and others "had put into use their criminal intentions to hatch pre-planned conspiracy in order to spark unrest in the country and also to spread fake news against the Indian National Congress".

12. At the behest of respondent No. 4, the State Police lodged an FIR No. 0215 of 2021 dated 19.05.2021 at PS - Civil Lines, District - Raipur, Chhattisgarh under Section 188, 469, 504, 505(1)(b) and 505(1)(c) of the IPC against the petitioners and certain named and unnamed individuals. The Impugned FIR is an abuse of the process of law and the State machinery for political ends is also evident from the fact that the respondent No. 4 is not named as the complainant in the Impugned FIR. Rather, it is one Manish Bajpayee, a Sub-Inspector and the Officer-in-Charge of the Police Station who is shown as the complainant. Incredibly, the FIR also shows that even though the complaint information was purportedly received at the police station at 4.05 PM on 19.05.2021, the FIR was lodged at 4.06 PM on the same day. The police could not possibly have examined the complaint and come to the conclusion that a cognizable case was made out within 60 seconds. On the same day, a complaint was also filed in Delhi by two members of the

Congress Party seeking lodging of an FIR against the petitioners and several other senior leaders of the BJP.

13. Pursuant to the lodging of the FIR, the police sent notice under Section 41A read with Section 91 of the Cr.P.C. to Dr. Raman Singh and through e-mail to Dr. Sambit Patra on 22.05.2021. Dr. Raman Singh presented himself for questioning and responded in writing on 24.05.2021 to the notice dated 21.05.2021. On the other hand, Dr. Sambit Patra responded on 23.05.2021 seeking at least one week's time to file reply. However, the said request was denied and vide another notice dated 23.05.2021, he was asked to appear for questioning within three days i.e. on 26.05.2021 without even referring to Dr. Patra's request dated 23.05.2021. Dr. Raman Singh received another notice dated 28.05.2021 under Section 91 of the Cr.P.C. from the respondent No.3 which has been responded to by seeking time to file reply.

14. In the meanwhile, as the Delhi Police was conducting a preliminary enquiry, the complaint made to the Delhi Police was suddenly withdrawn on or around 27.05.2021 by the complainants therein on the plea that the Chhattisgarh Police has already lodged an FIR.

15. At the outset, Mr. Mahesh Jethmalani as well as Mr. Ajay Burman, learned Senior Advocates appearing on behalf of the respective petitioners would submit that though they have prayed for various reliefs in these petition, they would confine their respective petitions only with respect to quashing of the FIR registered against the petitioners and would not be pressing for grant of other reliefs, as prayed for. They would submit the impugned FIR is an abuse of the process of law and the State machinery for political ends is evident from the fact that the said Akash Sharma (i.e Respondent No. 4 herein) is not named as the

complainant in the Impugned FIR Rather, it is one Manish Bajpayee, a Sub-Inspector and the Officer-in-Charge of the Police Station who is shown as the complainant. It is apparent that the impugned FIR and the purported investigation by the Respondent-State is intended only to intimidate and harass the petitioners, so that there is a chilling effect on their fundamental right to free speech which entitles them to bring to light any attempt to mislead or distort the public discourse. It is also evident that the FIR has been deliberately lodged in the State of Chhattisgarh because the political party which is the subject-matter of the petitioners' message/ tweet i.e. the Indian National Congress (Congress) happens to be the political party in power in this State. Learned Senior Advocates would further submit that before registration of impugned FIR at Raipur, Chairman of Research Department of AICC, Mr. Rajeev Gowda made a complaint before Commissioner of Police, Delhi and SHO, P.S.-Tughlak Road, Delhi on same subject matter. The petitioners came to know from various media reports that after receiving the complaint, police started a preliminary enquiry and issued notices to Twitter and others for finding the genesis of Toolkit. However, without waiting for outcome of investigation going on at Delhi, Congress Party lodged a false FIR at Raipur where it is the ruling party. This fact shows that impugned FIR was lodged at the behest of vested interests and by misusing the State machinery for political gain. The impugned FIR is being used as a tool to wreck political vengeance on the petitioners and those who are ideologically opposed to the Congress Party by blatantly exploiting the State police/machinery in Chhattisgarh. The respondent-State is making every effort to somehow implicate the petitioners on the basis of a false and baseless allegation in the impugned FIR which itself was lodged by abusing the process of law. Such conduct by the

respondents gravely threatens the fundamental rights of the petitioners and will cause them irreparable injuries.

16. They would further submit that the contents of FIR, which is reproduction of a letter of the respondent No. 4 written in English, states that the respondent No. 4 want to bring in the kind attention following facts and seek to register an FIR against Dr. Raman Singh (National Vice President) BJP, Mr. Sambit Patra (National Spokesperson) BJP and other such persons for forging the Letterhead of AICC Research Department and thereafter printing false and fabricated content on the same, in order to share the forged/BJP manufactured document from their verified twitter handles and other social media platforms, with the intent to create communal violence, fueling hate and spreading fake news. The hidden agenda of this team of fraudsters was to divert the attention of the Modi Government mammoth failure in providing necessary aid to the people of India, amidst the current pandemic. Mr. J.P. Nadda (JPNadda), Mr. Sambit Patra (sambitswaraj) Mr. B.L.Santosh @blsantosh) and other BJP functionaries, through their respective twitter handles (as mentioned) shared forged and fabricated documents with the intent to create communal disharmony and civil unrest in the country among individuals, escalating violence, fueling the hate and spreading fake news. Allegations have also been levelled against Smt. Smriti Irani, Union Minister, Government of India, that she was also indulged in spreading fake news.

17. Learned Senior Advocates appearing for the respective petitioners would further submit that even though the petitioners have been charged for the offences relating to public mischief and the creation/ promotion of enmity, hatred or ill-will amongst the public, no complaint was made to the police other than by the political functionary of the

Congress Party mentioned above. Clearly, therefore, the impugned FIR was lodged at the behest of vested interests and by misusing the State machinery for political gain. The petitioners are therefore compelled to seek quashing of the impugned FIR which is patently false and fabricated. Even otherwise, the impugned FIR deserves to be quashed and set aside because it has been lodged on the basis of allegations that are entirely false and baseless, and that do not even meet the basic ingredients of the various offences mentioned therein.

18. They would also contend that a bare perusal of the impugned FIR would show that the allegations made in the said FIR do not disclose the ingredients of the alleged offences even on the face of the record. Even if all the allegations in the FIR dated 19.05.2021 are taken to be correct, no offence is made out against the petitioners herein under sections 188, 469, 504, 505(1)(b) and 505(1)(c) of the IPC. The fact of *mala fides* and oblique motive in lodging the FIR is evident from the fact that the respondent No. 4 is not named as the complainant in the impugned FIR, rather it is one one Manish Bajpayee, a Sub-Inspector and the Officer-in-Charge of the Police Station who is shown as the complainant. Moreover, even though the petitioners have been charged with offences such as those relating to public mischief and the creation/ promotion of enmity, hatred or ill-will amongst the public, no complaint was made to the police other than by the political functionary of the Congress Party mentioned above. The impugned FIR is an utter abuse of the process of law. Above all, the FIR indicates that even though the complaint/ information was received at the police station at 4.05 p.m. on 19.05 2021, the FIR was lodged at 4.06 p.m. on the same day. The police could not possibly have examined the complaint within 60 seconds and come to the conclusion that a cognizable case was made out against

the petitioners. An offence under Section 188 of the IPC is committed only when the accused disobeys a direction of a public servant in an order promulgated by such public servant. Needless to say, in order to disobey any such direction, there must first be "an order promulgated by a public servant lawfully empowered to promulgate such order". A bare perusal of the Impugned FIR would show that the same nowhere even remotely mentions any such order promulgated by a public servant, let alone the violation of such order. Therefore by no stretch of imagination can section 188 of the IPC be attracted to the facts of the present case. This clearly shows complete non-application of mind and arbitrariness on the part of the State police. Further, an offence under Section 504 of the IPC is committed only when the following ingredients are satisfied: (a) there must be an intentional insult, (b) the insult must be such as to give provocation to the person insulted, and, (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence.

19. In support of their contention, learned Senior Advocates for the petitioners would rely on a decision of the Supreme Court in ***Fiona Shrikhande v. State of Maharashtra & Another***, (2013) 14 SCC 44. They would further submit that the impugned FIR merely and vaguely alleges that the petitioners' message/ tweet would "create communal disharmony and civil unrest in the country among individuals without any basis for saying so The said complaint also does not even remotely describe the nature of the so-called provocation, or as to who is the target of such provocation. Rather, the complaint is clearly in the nature of a political statement that seeks to rely on entirely hypothetical possibilities for making out a case against the petitioners. However, even on a bare reading of the Petitioners' message/ tweet would show

that there was not an iota of insult in the said message/ tweet, let alone any intention to insult. Secondly, it is evident that the Petitioners' message/ tweet is in the nature of a critique and by no stretch of imagination can it be said that it would have provoked any person, let alone saying that the petitioner intended or knew it to be likely that his so-called 'provocation will cause any person to break the public peace or to commit any other offense. In any event, the judicial standard is not mere insult, but the insult must be "of such a degree that should provoke a person to break the public peace or to commit any other offence" This standard has clearly not been met in the facts of the present case.

20. Moreover, an offence under Section 505 of the IPC is committed only when the ingredients mentioned therein are satisfied. In support of his contention, he relies on the decision of the Supreme Court in ***Kedar Nath Singh v. State of Bihar*** {AIR 1962 SC 955}. As such, none of the ingredients of the aforesaid sections are satisfied. Such vague and bald allegations containing hypothetical and exaggerated consequences cannot possibly be a reasonable basis for claiming that a cognizable case has been made out by the complainant for launching a criminal investigation, and that too at public expense. The petitioners' message/ tweet in question shows that there is absolutely no intent whatsoever to cause fear or alarm to the public, so as to induce any person to commit an offence against the State or against public tranquility, or to incite any class or community of persons against any other class or community. Further more, the Petitioner's message/ tweet was based on a document that was already available in the public domain and which the petitioners reasonably believed to be true. Therefore, the Petitioners' message/ tweet clearly fall within the scope of the Exception to section

505, IPC that has been created by the legislature to avoid a misuse of this provision.

21. A plain and simple reading of the Petitioner's message/ tweet would show that no part of the aforesaid message/ tweet has any tendency to create disorder or disturbance of public peace by resort to violence and till date, no such violence or disturbance of public peace and tranquility has been reported due to the Petitioner's tweet/ message. An offence under Section 469 of the IPC is committed only when the accused has committed a forgery as defined in section 463 of the IPC, and that too with an intention to harm (or with knowledge that it is likely to harm) the reputation of any party. Section 463 of the IPC says that a forgery is committed only when a person "makes a false document or false electronic record or part thereof "with intent to undertake the activities mentioned in that provision In the present case, it is evident that the petitioner has not 'made' the document that he attached with his Twitter message/ tweet that is claimed to be false because the said document was already in the public domain much prior to the time that the petitioner published his message/ tweet Since the petitioner did not make the said document, he could not possibly have had the intent to undertake any of the activities mentioned in section 463, IPC The petitioners' comments in his message/ tweet also cannot fall within the scope of section 463, IPC because that message/ tweet is not a 'document' or a 'electronic record' as defined in the Information Technology Act, 2000.

22. Mr. Jethmalani and Mr. Burman, learned Senior Advocates would further submit that the impugned FIR is nothing but an outcome of political vengeance which deserves to be quashed. The petitioners

freedom of speech cannot be gagged by oppressive tactics adopted by the State and its instrumentality.

23. In addition to the above, Mr. Burman, learned Senior Advocate appearing for the petitioner-Dr. Sambit Patra would submit that the Congress Party is habitual in lodging such frivolous complaints against Dr. Patra as previously also an attempt was made to muzzle the petitioner's voice and to violate his fundamental right by lodging two FIRs dated 11.05.2020 when the petitioner had posted of its past leaders. However, this Court had acted as the sentinel on the *qui vive* and quashed the said FIR as being baseless, vide the judgment dated 12.04.2021 in WP(Cr) No. 251 of 2020 ***Dr. Sambit Patra v. State of Chhattisgarh***.

24. Reliance has been placed by learned Senior Advocates appearing for the respective petitioners on the judgments of the Supreme Court in ***Patricia Mukhim v. State of Meghalaya & Others*** {MANU/SC/0217/2021}, ***Guru Bipin Singh v. Chongtham Manihar Singh & Others*** {MANU/SC/1783/1996}, ***Haji Iqbal @ Bala through SPOA v. State of Uttar Pradesh & Others,*** {2023 Latest Caselaw 615 SC}, ***Mahmood Ali & Others v. State of U.P. & Others,*** {2023 LiveLaw (SC 613}, ***Ashok Chaturvedi & Others v. Shitul H. Chanchani & Another,*** {(1998) 7 SCC 698}, ***State of Haryana and Others v Bhajan Lal and Others,*** {(1992) Supp (1) SCC 335}, ***Nupur J. Sharma & Others v. The State of West Bengal & Others,*** WP(Crl) No. 155/2020, dated 09.12.2021, ***Vinod Dua v. Union of India & Others,*** {2021 SCC OnLine SC 423}, a judgment of the learned Single Judge of Madras High Court in ***Subramanian Swamy v. C.Pushparaj*** {Crl.O.P. 1039 of 1996, dated 03.02.1998}, ***G.Sivarajaboopathi v. State, represented by the Inspector of***

Police, Cyber Crime {Crl.O.P.(MD) No. 106 of 2022, decided on 21.01.2022}, a judgment of the learned Single Bench of the Punjab & Haryana High Court in ***Kumar Vishwas v. State of Punjab & Another***, {CRM-M-17450-2022, dated 12.10.2022}, ***Tejinder Pal Singh Bagga v. State of Punjab & Another***, {CRM-M-14632-2022}, a decision of learned Single Judge of the High Court of Jammu & Kashmir in ***Mohammad Salim Pandith v. State of J&K and others*** {CrMC No. 152/2018, dated 07.10.2020}, and an order of learned Single Bench of this Court in ***Apurva Ghiy v. The State of Chhattisgarh*** {MANU/CG/0515/2020}.

25. Per contra, Mr. S.C.Verma, learned Advocate General alongwith Mr. Chandresh Shrivastava, learned Additional Advocate General appearing for the respondents No. 1 to 3 would submit that the instant petition is without substance and bereft of merits and liable to be dismissed at the threshold. The complaint was filed by the complainant before the concerning Police Station leveling allegations against the petitioner, thereafter, the impugned FIR was registered against the petitioners for the offences punishable under the aforesaid sections of Indian Penal Code and the matter was taken into investigation. The petitioners have sought quash of the FIR registered against them bearing Crime No. 0215 of 2021 dated 19.05.2021 lodged at PS - Civil Lines, District Raipur (CG). The said relief cannot be granted to the petitioners Section 155 of CrPC does not prohibit registration of FIR in case of Non-Cognizable offence. It is settled principle of law that, where the information discloses a cognizable offence as well as non-cognizable offence, the Police officer is not debarred from investigating any non-cognizable offence which may arise out of the same. The Investigating authority can include that non-cognizable offence in the

charge sheet which would be presented before the competent court for commission of a cognizable offence. Both the offences, if cognizable could be investigated together under Chapter 14 of the Code and also one of the non- cognizable offence. The intention of the legislature in Section 195 of Cr.P.C appears to bar the Court from taking cognizance in case certain offences, and not *per se* appears registration of an FIR. In another words, the statutory power of the police to investigate under the Cr.P.C. is not in any way controlled or circumscribed by section 195 of Cr.P.C. Mr. Verma would place reliance on the judgment of the Supreme Court in ***Praveen Chandra Modi v. State of Andhra Pradesh*** {AIR 1965 SC 1185}. The aforesaid preposition is being considered by the Hon'ble Supreme Court in catena of cases. Taking into consideration the settled principles of law it has been reiterated by the Supreme Court that section 155(4) of Cr.P.C does not prohibit the police authorities to register the FIR for offences which are non-cognizable in nature in addition to the cognizable offences. The law on the aforesaid provision of law is no longer res-integra. So far as the contention of the petitioners is concerned that there are certain offences for which the FIR cannot be registered, the reason assigned by the petitioners is that there is bar under the relevant provision of code of criminal procedure 1973. It is fundamentally clear that the law needs to be interpreted having regard to the intention of the legislature. The intention of the legislature in Section 195 of Cr.P.C. appears to bar the Court from taking cognizance in case of certain offences, and not per se bar registration of a FIR. In other words, the statutory power of the Police to investigate under the Code is not in any way controlled or circumscribed by Section 195 of Cr.PC. It is of course true that, upon the charge sheet (challan), if any, filed on completion of the investigation

into such an offence, the Court would not be competent to take cognizance thereof in view of the embargo of Section 195 (1) (b) of Cr.PC, but nothing therein defers the Court from filing a complaint for the offence on the basis of the FIR (filed by the aggrieved private party) and the materials collected during investigation. Even if the offences are non cognizable the police authorities can register the offence. In support of his contention, he would rely on a decision of the Supreme Court in ***State of Punjab v. Raj Singh*** reported in 1998 (2) SCC 391. He would further submit that once an FIR is registered by the police, *malafides* on the part of the informant would be of secondary importance. To buttress his argument, he would rely on the decision of the Supreme Court in ***State of Bihar v. P.P. Sharma, IAS & Another,*** {1991 SCR (2) 1} and ***State of Bihar v. J.A.C.Saldhana & Others*** {(1980) 2 SCR 16}.

26. Mr. Verma relies on the decision of the Supreme Court in ***State of Karnataka v. M. Devendrappa*** {(2002) 3 SCC 89}, wherein it has been observed that exercise of power under Section 482 of the Code in a case of this nature is an exception and not the rule. The section does not confer any new powers on High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be

exercised *ex debite justitiae* to do real and substantial justice for the administration of which alone Courts exist.

27. So far as the question with regard to the validity of the FIR is concerned, Mr. Verma would submit that FIR is not an encyclopedia of all facts. He would rely on a decision of the Supreme Court in ***Amish Devgan v. Union of India & Others*** {(2021) 1 SCC 1}, and as to what should be the contents of the FIR, he relies on a decision of the the Supreme Court in ***Rajesh Bajaj v. State of NCT of Delhi*** {(1999) 3 SCC 259}. He would further submit that the petitioners have vehementally contended that, in order to register an offence under Section 188 of IPC, prior sanction of the Magistrate under Section 155 Cr.P.C is mandatory for investigating the offences. It would not be out of place to mention here that, even if the offence is not non-cognizable but the same has been registered in addition of cognizable offence in such a condition the permission of the Magistrate is not required and the issue of order passed by the promulgating authority would not come into the picture at the initial stage of registration of FIR. It goes without saying that the veracity of the complaint or information can only be verified during investigation, i.e. after registration of FIR. The procedure enshrined under section 154 of Cr.P.C is a mandatory one and the investigating agency is under an obligation to register an FIR on receipt of information leveling cognizable offence. Exception to this general principle of criminal law is recognized by the Hon'ble Supreme court in the case of ***Lalita Kumari v. Government of UP & others*** {(2014) 2 SCC 1}, where a preliminary investigation is permissible prior to registration of FIR with respect to the case related to corruption, matrimonial dispute, economic offences etc. However, the scope of verification/investigation of complaint cannot be analized to the extent where the veracity of a

complaint or information can be verified. It would not be out of place to mention here that procedure safeguard contained in section 154 of CrPC is a mandatory one and any violation thereof is not a mere irregularity but an illegality.

28. Mr. Verma would also submit that it is evident that the Police has registered FIR on the basis of the complaint made by the complainant on cognizable offence against the petitioner and the free, fair and transparent investigation is being carried out by the investigating authority on the basis of is complaint made by the complainant for cognizable offence. The Police is not at all influenced by the status or position of any of the parties concerned and the matter is being duly investigated in accordance with law and after due investigation, report would be filed against the present petitioner in the matter before the learned Jurisdictional Magistrate The FIR is merely first information reported to the concerned Police Officer and the offence mentioned therein do not regulate or contain the scope of investigation in a particular offence. It is humbly submitted that, the allegations would be investigated in their entirety on the basis of evidence collected during the investigation and the same would not be circumscribed by the offence mentioned in the FIR. Interference by this Court at the State of FIR may not be justified as the case is only at the stage of FIR and the further proceedings with regard to the same has been stayed by this Hon'ble Court. If the investigation is allowed to be completed, if the police finds out that no offence is made out, the same would lead to filing of closure report which would not cause any prejudice to the petitioners.

29. It is a well settled preposition of law that an FIR is not an encyclopedia which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence

though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage, it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the

accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can.

30. Hence, applying the settled legal position as submitted herein above and considering the factual matrix of the matter within the four corners of the allowed limits the instant petition is devoid of merits and is liable to be dismissed. The impugned criminal proceedings initiated by the police authority is properly directed and is based on sound reasons, therefore, there is no illegality or infirmity on the part of the State/respondents police authority, thus, the instant petition filed by the petitioners is baseless and devoid of merits, thus, deserves to be dismissed at the threshold. The petitioner has failed to show any good cause in this petition for seeking indulgence of this Hon'ble Court and the petition is not of such nature where this Hon'ble Court may exercise it's discretionary jurisdiction under Article 226 of Constitution of the India. It is humbly submitted that, the allegation leveled by the petitioner against the Respondents Police authorities are baseless and concocted. The Police has investigated the matter with all its honesty and diligence and no negligence is ever committed in the performance of its duties by the respondents.

31. Mr. Verma would lastly submit that the material which have been posted by the petitioners, appear to be serious one which may disturb the peace and harmony, the freedom of speech cannot be extended to such extend which can be prejudicial to the peace and harmony of the State. The impugned FIR discloses the cognizable offence against the

petitioner, hence, no interference should be called for by this Court in its extra ordinary power under Section 226 of the Constitution of India for quashing of the FIR. In proceedings under Article 226 of the Constitution of India, the Hon'ble High Court does not adjudicate the correctness of the allegations in a FIR The Court may only intervene in exceptional cases, if the allegations made in the FIR *ex-facie* did not disclose any offence at all. The impugned criminal proceedings have been initiated by the police authority on the basis of the written report filed by the complainant after due investigation and inquiry, therefore, in view of the facts and circumstances of the case and the submissions made by the answering respondent, the impugned proceedings initiated by the police authority, are proper, legal, strictly in accordance with law and within the jurisdiction and there is no infirmity or illegality in the same. Therefore, in view of the facts and circumstances of the case and the submissions made by the Answering Respondent, the present petition is devoid of any merit and substance and deserves to be dismissed.

32. Mr. Verma would also submit that in a similar case where the petitioner had filed a petition {WP(Cr) No. 273 of 2020, ***Ashok Chaturvedi v. State of Chhattisgarh & Others***, and other connected matters} for quashing of the FIR registered against him, this Court after discussing various judgments of the Supreme Court, dismissed those petitions vide order dated 19.06.2023 observing that considering the allegations made in the FIRs and material brought on record, it cannot be said that no *prima facie* case is made out against the petitioner, rather there appears to be sufficient ground for investigation in the matter.

33. Despite service of notice, none appears on behalf of the respondent No. 4. Though the FIR was lodged on the complaint made by the respondent No. 4, he has chosen not to appear before this Court.

34. We have heard learned counsel for the parties, perused the pleadings and documents appended thereto with utmost circumspection.

35. WP(Cr) No. 323/2021 was filed by Dr. Raman Singh on 04.06.2021 and WP(Cr) No. 325/2021 was filed by Dr. Sambit Patra on 07.06.2021. Both the petitions were heard on 11.06.2021 and while issuing notices to the respondents, an interim order staying the effect and operation of the impugned FIR bearing Crime No. 0215/2021 dated 19.05.2021 was passed. Against the order dated 11.06.2021 passed by the learned Single Judge, the State of Chhattisgarh/respondents No. 1 to 3 preferred a Special Leave to Appeal (Crl). No. 4458/2021 before the Supreme Court. Vide order dated 22.09.2021, the Supreme Court, while not interfering with the interim order passed by the learned Single Judge, requested the High Court to dispose of these pending petitions as expeditiously as possible.

36. Thereafter, the matters were listed on various occasions and the interim protection granted by this Court continued. The cases were heard finally on 12.09.2023.

37. The FIR revolves around the message/tweet posted by the petitioners on the social media platform which has been alleged to fuel hatred and create communal violence and also being a case of spreading false and fake news. The FIR has been registered for the offences under Sections 504, 505(1)(b), 505(1)(c), 469 and 188 of the IPC.

38. Section 188 of the IPC reads as under:

> *"**188. Disobedience to order duly promulgated by public servant.**—Whoever, knowing that, by an order promulgated*

by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm."

39. Section 469 of the IPC reads as under:

*"**469. Forgery for purpose of harming reputation**.— Whoever commits forgery, intending that the document or electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."*

40. Section 504 of the IPC reads as under:

*"**504. Intentional insult with intent to provoke breach of the peace**— Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*"

41. Section 505(1)(b) and (c) of the IPC reads as under:

> "***505. Statements conducing to public mischief***.—*(1) Whoever makes, publishes or circulates any statement, rumour or report—*
>
> *(a) xxx xxx xxx*
>
> *(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or*
>
> *(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.*"

42. The petitioner-Dr. Raman Singh has filed a covering memo on 09.06.2021 to indicate that the contents which he had tweeted was already available in the public domain in the social media platform i.e. Twitter. A perusal of the said document would go to show that a twitter handle namely TEAM BHARAT had already flashed a message 'Big Expose: Congress Toolkit. The real face of the Congress Party stands exposed. #CongressToolkit Exposed'. It appears that this message was forwarded/retweeted by the petitioner-Dr. Raman Singh and the tweet made by the petitioner-Dr. Sambit Patra is 'Friends look at the #CongressToolKit in extending help to the needy during the Pandemic! More of a PR exercise with the help of 'Friendly Journalists' & 'influencers' than a soulful endeavour. Read for yourselves the agenda of the Congress: #CongressToolkitExposed".

43. While we look at the offences registered against the petitioners and compare it with the messages/tweets of the petitioners, we are unable to comprehend as to how offence under Sections 504, 505 (1)(b), 505(1)(c), 469, 188 IPC are made out.

44. Section 188 is with regard to disobedience to order duly promulgated by a public servant. The respondents/State, in its return has not been able to demonstrate as to which is the order which was duly promulgated by any public servant has been disobeyed by the petitioners. Similarly, Section 469 IPC is in respect of forgery for the purpose of harming reputation of any party, or knowing that the document or electronic record forged it is likely to be used for that purpose. In the present case, the tweet/message tweeted/forwarded by the petitioners herein was already available in public domain and it is not the case of the respondent/State also that the the petitioners herein were involved in preparation of the said forged letter head of the Congress Party containing false information.

45. Section 504 of the IPC is with regard to intentional insult with intent to provoke breach of the peace. An offence under Section 504 of the IPC is committed only when the following ingredients are satisfied: (a) there must be an intentional insult, (b) the insult must be such as to give provocation to the person insulted, and, (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. None of these ingredients exists in the present cases. The petitioners message/ tweet were based on a document that was already available in the public domain and which the petitioners reasonably believed to be true. Therefore, the Petitioners' message/ tweet clearly fall within the scope of the Exception to section 505, IPC that has been created by the legislature to avoid a misuse of this provision. A plain and simple reading of the Petitioner's message/ tweet would show that no part of the aforesaid message/ tweet has any tendency to create disorder or disturbance of public peace by resort to violence and till date, no such violence or disturbance of public peace

and tranquility has been reported due to the Petitioner's tweet/ message and as such, no case under Section 505(1)(b) and (c) is made out against the petitioners.

46. In ***Fiona Shrikhande*** (supra), the Supreme Court while dealing with Section 504 IPC, observed at paragraph 13 as under:

> *"13. Section 504 IPC comprises of the following ingredients, viz., (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC".*

47. Further, the Supreme Court, in ***Kedar Nath Singh*** (supra), it was observed as under:

> "*26……The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public*

measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress (vide (1)). The Bengal Immunity Company Limited v. The State of Bihar (1) and (2) R.M.D. Chamarbaugwalla v. The Union of India (2). Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence."

48. In ***Ashok Chaturvedi & Others*** (supra), the Supreme Court observed at paragraph 5 as under:

"5. But the question yet remains for consideration is whether the allegations made in the petition of complaint together with statements made by the complaint and the witness before the Magistrate taken on their face value, do make the offence for which the Magistrate has taken cognizance of? The learned counsel for the respondent in this connection had urged that the accused had a right to put this argument at the time of framing of charges, and therefore, this Court should not interfere with the

order of Magistrate taking cognizance, at this stage. This argument, however, does not appeal to us inasmuch as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code he is debarred from approaching the court even at an earliest point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. It has been held in a number of cases that power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under Section 482 of the Code can be exercised. Bearing in mind the parameters laid down by this Court in several decisions for exercise of power under Section 482 of the Code, we have examined the allegations made in the complaint petition and the statement of the complainant and the two other witnesses made on oath before the Magistrate. We are clearly of the opinion that the necessary ingredients of any of the offence have not been made out so far as the appellants are concerned. The petition of complaint is a vague one and excepting the bald allegation that the shares of the complainant have been transferred on the forged signatures, nothing further has been started and there is not an iota of material to indicate how all or any of these appellants are involved in the so-called allegation of forgery. The statement of the

complainant on oath as well as his witnesses do not improve the position in any manner, and therefore, in our considered opinion even if the allegations made in the complaint petition and the statement of complaint and his witnesses are taken on their face value, the offence under Sections 406, 420, 467, 468 and 120-B of the Indian Penal Code cannot be said to have been made out. This being the position the impugned order of the Magistrate taking cognizance of the offence dated 5.2.1996 so far as it relates the appellants are concerned cannot be sustained and the High Court also committed error in not invoking its power under Section 482 of the Code. In the aforesaid premises, the impugned order of the High Court as well as the order of the Magistrate dated 5.2.96 taking cognizance of the offence as against the appellants stand quashed."

49. Reverting to the facts of the present case in the light of the definition and essential ingredients of Section 505(1) of the IPC, a careful perusal of the FIR would show that none of the ingredients of Section 505(1) is available and there is no allegation in the FIR which directly affects on the security of the State or public order. The contents of the two posts/tweets made by the petitioners may be incorrect/untrue but it cannot be said that the same was posted with intent to incite or which is likely to incite any class or community of persons to commit an offence against any other class or community. As such, merely making allegation against political party even if it is incorrect/untrue would not constitute offence under Section 505(1) of the IPC and therefore, the ingredients of Section 505(1) of the IPC i.e. either clause (b) or (c), are not available and thus, no offence under Section 505(1) of the IPC is made out against the petitioners.

50. Annexure P/2 is the copy of the news-clipping from “India Today” which states that on May 18, a Twitter account, Team Bharat’ tweeted screenshots of an alleged #CongressToolKit” and claimed that it exposed the Congress’s agenda to malign Modi’s image. Within the next few hours, several BJP leaders including BJP National President, J.P.Nadda, General Secretary, B.L.Santosh, Union Minister, Harsh Vardhan and Smriti Irani and National Spokesperson Sambit Patra had tweeted about the toolkit. Meaning thereby that the said disputed message was available in the public domain even before tweeting/posting by the petitioners herein which is further affirmed by the documents filed by way of covering memo by the petitioner-Dr. Raman Singh which shows that Team Bharat had posted the said message at 10:01 a.m. on 18.05.2021 while the message posted by the petitioner-Dr. Raman Singh was at about 4:42 p.m. of the said date.

51. From perusal of the FIR under challenge, it is apparent that the complaint was received at the police station at 4.05 p.m. on 19.05 2021, and immediately within one minute i.e. at 4:06 p.m., the FIR was registered. How the police authorities reached to the conclusion in a minute that the said complaint makes out a cognizable offence against the petitioners. The haste shown by the police authorities is also beyond understanding.

52. At this juncture, it would be apt to mention that the legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a complaint, FIR or a charge-sheet should be exercised sparingly and only in exceptional cases and Courts should not ordinarily interfere with the investigations of cognizable offences. However, where the allegations made in the FIR or the complaint even if 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, the FIR or the charge-sheet may be quashed in exercise of powers under Article 226 or inherent powers under Section 482 of the Cr.P.C. In a well celebrated judgment of the Supreme Court in ***Bhajan Lal*** (supra), it has been held that that those guidelines should be exercised sparingly and that too in the rarest of rare cases. Guidelines are as follows:

> *"(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 FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
>
> *(5) Where the allegations made in the FIR of 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"

53. From the analysis of the pleadings made in both these petitions and the return filed on behalf of the State/respondents No. 1 to 3, these cases fall within the guidelines No. 1, 5 and 7 of ***Bhajan Lal*** (supra). Very surprisingly, the complainant i.e. the respondent No. 4 on whose written complaint the FIR was lodged, has chosen not to appear before this Court despite service of notice. The respondent No. 4 is also not an common man but the President of NSUI, Chhattisgarh. If he was so much concerned and vigilant that no false/incorrect message on social media may cause unrest in the State, he should have also appeared before this Court to put forth his version. As such, it is indicative of the fact that the FIR in question is an outcome of pure political vengeance to settle their scores. When the tweet made by the petitioners herein was already available in public domain, there was no reason to lodge FIR against the petitioners but even if it was required to do so, it should have been made against the first person who tweeted the false message. The petitioners under a bonafide belief considering it to be a genuine message, forwarded/retweeted the same from their social media account which was already in the public domain.

54. Recently, in ***Neeharika Infrastructure Private Limited v. State of Maharashtra*** (Criminal Appeal No. 330 of 2021, decided on 13.04.2021), a three-judge Bench of the Hon'ble Supreme Court considered the powers of the High Court while adjudicating a petition for

quashing of the FIR under Article 226 of the Constitution of India and under Section 482 of the Criminal Procedure Code, 1973. In ***Neeharika Infrastructure Private Limited*** (supra), the appellants challenged an interim order issued by the Bombay High Court, in a quashing petition filed under Section 482 Cr.P.C. and Article 226 of the Constitution. The Bombay High Court issued an interim order directing that "no coercive measures shall be adopted against the petitioners in respect of the said FIR". While examining the correctness of the said interim order, the Supreme Court in para-23 has held as under :

> *"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/charge-sheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:*
>
> *i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*
>
> *ii) Courts would not thwart any investigation into the cognizable offences;*

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress,

the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an

interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

> *xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."*

55. In ***Neeharika Infrastructure*** (supra) also, guidelines have been provided to the Courts with regard to when the Courts may interfere with the FIR. There is no absolute bar in quashing of the FIR rather condition No. (iii) above clearly provides that in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on; and condition No. (x) provides that save in exceptional cases where non- interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

56. In the instant cases, posting/tweeting a message which is more in the form of a political gossip, has been tried to given a shape of an act of spreading fake news and inciting of violence. From perusal of the FIR, it can be safely held that no offence whatsoever is made out against the petitioners. Hence, this Court cannot permit the same to be proceeded with. The respondent No. 4 has tried to rope the petitioners as well as one Union Minister and other functionaries of the BJP on a petty political ideological tussle, which shows the malafide on the part of the said respondent as after lodging of the FIR, he has not cared to put forth his version in support of the FIR, before this Court.

57. Reliance placed by learned Advocate General on the decision rendered by this Court in ***Ashok Chaturvedi*** (supra), is of no help to the respondent/State as the issue involved in that case related to anti-

corruption and commission of economic offence which is entirely different from the facts of the present case. As such, the case of ***Ashok Chaturvedi*** (supra) is distinguishable on facts.

58. In view of the above analysis and applying the ratio laid down by the Supreme Court in the cases (supra), we are of the considered opinion that the impugned FIR bearing Crime No. 0215 of 2021, dated 19.05.2021 for the offences in question, registered at Police Station, Civil Lines, Raipur, District Raipur and all the consequential proceedings, if any, in respect of the petitioners and others, deserve to be and is accordingly quashed. Since the learned counsel for the petitioners have confined these petitions only to quashing of the FIR, we do not wish to pass any order with respect to other reliefs as prayed for by the petitioners.

59. Accordingly, both the writ petitions are **allowed** to the above extent.

60. No order as to costs.

Sd/-
(N.K.Chandravanshi)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice