2025 INSC 410

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1545 OF 2025

IMRAN PRATAPGADHI ...APPELLANT

VERSUS

STATE OF GUJARAT AND ANR. ...RESPONDENTS

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECT

1. On 26th January 2025, our Constitution became 75 years old. One of the most important fundamental rights conferred on the citizens of India is under Article 19 (1)(a) of the Constitution. It is the fundamental right of freedom of speech and expression. This case shows that even after 75 years of the existence of our Constitution, the law enforcement machinery of the State is either ignorant about this important fundamental right or does not care for this fundamental right.

2. The issue in this appeal revolves around a poem recited in the background of a video clip. The video clip was posted on social media by the appellant. The text of the poem has been reproduced in paragraph 13 of the impugned judgment, which reads thus:

> **"**ए खून (blood) के प्यासो (thirsty) बात सुनो
> ग़र हक्क़ (truth) की लड़ाई जुल्म (excesses/injustice) सही
> हम जुल्म (excesses/injustice) से इश्क़ (love) निभा देंगे
> गर शम- ए- गिरिया (melting of a candle which resembles tears)
> आतिश (flame) है
> हर राह वो शम्मा (light) जला देंगे
> गर लाश हमारे अपनोंकी खतरा है तुम्हारी मसनद (throne) का उस रब (god) की क़सम हस्ते हस्ते
> कितनी लाशे दफ़ना देंगे
> ए खूनके प्यासों बात सुनो**"**

3. The appellant is a Member of the Rajya Sabha. The 2nd respondent is the first informant at whose instance a First Information Report (for short, 'FIR') was registered with Jamnagar Police Station for the offences punishable under Sections 196, 197(1), 302, 299, 57 and 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short, 'the BNS'). In the complaint of the 2nd respondent, he stated that on 29th December 2024, on the occasion of the birthday of one Altaf Ghafarbhai Khafi, a member of the Municipal

Corporation of Jamnagar, a mass wedding program was held at Sanjari Education and Charitable Trust. The said Municipal Councillor invited the present appellant to the function. A video of the event was made. The appellant posted the video on the social media platform 'X' from his verified account. The video has the recitation of the poem reproduced above in the background. The allegation in the complaint is that the spoken words of the poem incite people of one community against another, and it hurts a community's religious and social sentiments. It is alleged that the song had lyrics that incited people of other communities to fight for the community's rights. It is alleged that the video posted by the appellant created enmity between two communities at the national level and hatred towards each other. It was further alleged that it had a detrimental effect on national unity.

PROCEEDINGS BEFORE THE HIGH COURT

4. The appellant filed a petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (for short, 'the BNSS') read with Article 226 of the Constitution of India, praying for quashing the said FIR. While issuing notice on the said petition, the learned Judge had directed the appellant to file an affidavit disclosing the poem's source. Accordingly, an affidavit was filed by the appellant. In paragraphs 3 to 5 of the affidavit, he stated thus:

> **"**3. In compliance with this Hon'ble Court's oral order dated 13.01.2025 in R/Special Criminal Application (Quashing) No.551 of 2025, **I stated that the poem in question, based on available information, including sources reviewed through ChatGPT and public domain opinions, the poem is attributed to either Faiz Ahmed Faiz or Habib Jalib. However, as internet opinions remain divided, I am unable to conclusively ascertain the definite authorship between the two. A copy of the screenshot of the results of ChatGPT search engine are annexed herewith and marked as ANNEXURE-A.**
>
> **4. It is further stated that a plain reading of the song poem, it is a message of love and non-violence**
>
> **5.** I further solemnly affirm that I am not the writer of the song/poem in question. 6. I state that the annexures produced with this affidavit are true copies of their originals.**"**
>
> (emphasis added)

5. By the impugned judgment and order, the learned Single Judge rejected the petition by holding that as the investigation is at a very nascent stage, interference cannot be made in view of the decision of this Court in the case of ***Neeharika Infrastructure Pvt. Ltd. v State of Maharashtra***[1]**.**

[1] 2021 SCC Online SC 315

SUBMISSIONS

6. The submission of the appellant in support of the appeal is that none of the ingredients of the offences alleged against the appellant are made out on the plain reading of the complaint and the poem. It is pointed out in the appeal that, as it usually happens, posting the video on the social media site 'X' receives several responses, some in favour, some against. Therefore, it cannot be said that the poem caused social disharmony amongst the people. It is submitted that the poem does not promote disharmony or feelings of enmity, hatred or ill-will between the various religious, racial, language or regional groups and castes or communities. It is submitted that, on its plain reading, it is about sacrificing oneself to fight for rights and truth. The poem promotes non-violence and preaches that one must suffer injustice with love. The submission of the learned senior counsel appearing for the appellant is that registering FIR based on the said poem violates the appellant's fundamental right guaranteed under Article 19(1)(a) of the Constitution. He submitted that the police have shown insensitivity. Even the High Court has not attempted to appreciate the message sought to be conveyed by the poem.

7. The Learned Solicitor General of India has taken a fair stand and has left it to the Court to make an

appropriate decision. He, however, submitted that the tall claim made by the appellant on oath that the poem's author can be either Faiz Ahmed Faiz or Habib Jalib is entirely wrong. He submitted that the said contention raised by the appellant on oath has no basis at all. He submitted that it is the obligation of the police to register an FIR. The High Court has followed the law while rejecting the appellant's petition. Therefore, the criticism made by the learned senior counsel for the appellant about the approach of the High Court is not correct.

8. The office report of 7th February 2025 records that affidavit of dasti service on 2nd respondent has been filed. None appeared for the respondent.

CONSIDERATION OF SUBMISSIONS

WORDS SPOKEN

9. A broad English translation of the said poem reads thus:

> **"**Those who are blood thirsty, listen to us
> If the fight for our rights is met with injustice
> We will meet that injustice with love
> If the drops flowing from a candle are like a flame (Analogy: if the tears from our face are like a flame)
> We will use it to light up all paths

If the bodies of our loved ones are a threat to your throne
We swear by God that we will bury our loved ones happily
Those who are blood thirsty, listen to us.”

10. On plain reading of the original Urdu version and its English translation, the following conclusions can be drawn:

a) This poem has nothing to do with any religion, community, region or race;

b) By no stretch of imagination, the contents affect national integration;

c) It does not jeopardise the sovereignty, unity, integrity or security of India;

d) It suggests that while fighting to secure our rights if we are met with injustice, we will face it with love. We will use our tears as flames to light up all paths;

e) It gives a warning to the throne (the rulers). It states that if the bodies of our loved ones are a threat to the rulers, we will bury our loved ones happily;

f) It preaches non-violence. It says that if the fight for our rights is met with injustice, we will meet injustice with love. This gives a message that

injustice should not be retaliated, but it should be met with love;

g) The poem refers to the throne in the context of the fight against injustice. The reference to the throne is symbolic. It is a reference to an entity which is responsible for causing injustice. It gives a warning that if the bodies of loved ones are a threat to the throne, we will happily accept the deaths of our loved ones. It suggests that one should be willing to sacrifice life in the fight against injustice; and

h) Thus, the poem does not encourage violence. On the contrary, it encourages people to desist from resorting to violence and to face injustice with love. It states that if our fight with injustice results into the death of our near and dear ones, we would be happy to bury their bodies.

WHETHER ANY OFFENCE IS MADE OUT

11. Now, let us turn to the FIR, the English translation of which has been annexed to the petition. The relevant part of the FIR reads thus:

> **"**According to Section 196, 197(1) 302 299, 57, 3(5) of the Indian Penal Code 2023, it is in such a way that the Imran Pratapgarhi has created a verified X Account named Imran Pratapgarhi Shayarlmran on social media

platform X with the username link https://x.com/shayarimran?ss in the bio of which is Official Twitter Account of Imran Pratapgarhi | Member Of Parliament Rajya Sabha | National Chairman @INCMinority Member of @INCIndia Yash Bharti Awardee Account Holder has recorded a 46-second video of a mass marriage program at Rumi Park Morkanda Road Kalavad Naka, Jamnagar city, Jamnagar district, Gujarat state, titled 'Jamnagar Gujarat Ke Ek Samuhik Vivah Program Me ShirkatThi' Khun Ke Pyaso Baat Suno Agar Haq Ki Jabhanda Zulma Sa Hi, Hum Zulma Se Ishq Nibha Deng Hum Zulma Se Ishq Nibha Deng Gar Sammegiriya Atish Hai Har Raah Wo Samma Jala Denge Gar Laash Hamare Apno Ki, Khatra Hai Tumari Masnad Ka, Us Rab Ki Kasam Haste Haste Kitni Laashe Dafna Deng Hai Khun Ke Pyaso Uploading a video vyith the words "Baat Sunohai Khun Ke Pyaaso Baat Sun" and **using provocative language about the religion, caste and language of Hindus, Muslims and other castes living in India, promoting enmity between different groups, making statements that are detrimental to national unity, making statements that are harmful to national unity, making statements with the intention of hurting religious feelings, making religious insults, spreading the video among the people with the intention of causing shock, inciting others to commit a crime."**

(emphasis added)

12. The poem does not refer to any religion, caste or language. It does not refer to persons belonging to any religion. By no stretch of imagination, does it promote enmity between different groups. We fail to understand how the statements therein are detrimental to national unity and how the statements will affect national unity. On its plain reading, the poem does not purport to affect anyone's religious feelings.

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

> **"**196. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—(1) Whoever—
>
> (*a*) by words, either spoken or written, or by signs or by visible representations or through electronic communication or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or
>
> (*b*) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities,

and which disturbs or is likely to disturb the public tranquillity; or

(*c*) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

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

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.**"**

14. The offence under Section 196 is attracted when the words, either spoken or written, or by signs or visible representations, promote enmity between different groups,

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

15. Section 197 reads thus:

> "197. Imputations, assertions prejudicial to national integration.—(1) Whoever, by words either spoken or written or by signs or by visible representations or through electronic communication or otherwise,—
>
> (*a*) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India; or
>
> (*b*) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied, or deprived of their rights as citizens of India; or
>
> (*c*) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons; or
>
> (*d*) makes or publishes false or misleading information, jeopardising the

> sovereignty, unity and integrity or security of India,
>
> shall be punished with imprisonment which may extend to three years, or with fine, or with both.
>
> (2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.**"**

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

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

> **"**299. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.—Whoever, with deliberate and malicious intention of outraging the religious

> feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or through electronic means or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.**"**

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

18. Even offence under Section 302 of the BNS has been alleged, which reads thus:

> **"**302. Uttering words, etc., with deliberate intent to wound religious feelings of any person.—Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.**"**

An offence under Section 302 will be made out if any words are uttered with the deliberate intention of wounding the

religious feelings of any person. Even this section is not applicable on its face.

19. Section 57 of the BNS is alleged to be applicable, which reads thus:

> **"**57. Abetting commission of offence by public or by more than ten persons.—Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to seven years and with fine.**"**

We fail to understand, even if it is assumed that the appellant has committed some offence, how he has abetted the commission of an offence by the public generally or by any number or class of persons exceeding ten.

OBLIGATION TO REGISTER A FIRST INFORMATION REPORT

20. The question is whether in the facts of the case, it was obligatory under sub-Section (1) of Section 173 of the BNSS to register FIR. Section 173, which deals with information in cognizable cases, reads thus:

> **"**173. Information in cognizable cases.—(1) Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed, may be given

orally or by electronic communication to an officer in charge of a police station, and if given—

(*i*) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it;

(*ii*) by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf:

Provided that if the information is given by the woman against whom an offence under Section 64, Section 65, Section 66, Section 67, Section 68, Section 69, Section 70, Section 71, Section 74, Section 75, Section 76, Section 77, Section 78, Section 79 or Section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that—

(*a*) in the event that the person against whom an offence under Section 64, Section 65, Section 66, Section 67, Section 68, Section 69, Section 70, Section 71, Section 74, Section 75, Section 76, Section 77, Section 78, Section 79 or Section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, is temporarily or

permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(*b*) the recording of such information shall be videographed;

(*c*) the police officer shall get the statement of the person recorded by a Magistrate under clause (*a*) of sub-section (6) of Section 183 as soon as possible.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant or the victim.

(3) Without prejudice to the provisions contained in Section 175, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence,—

(*i*) proceed to conduct preliminary enquiry to ascertain whether there exists a *prima facie* case for proceeding in the matter within a period of fourteen days; or

(*ii*) proceed with investigation when there exists a *prima facie* case.

(4) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-

> section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate.**"**

Sub-Section (1) provides for giving information relating to the commission of a cognizable offence. It may be given orally or by electronic communication to the officer-in-charge of a police station. If the information discloses the commission of a cognizable offence, it is mandatory to record the substance of the information in a book to be kept by the officer in the form prescribed by the State Government. No further inquiry can be made by the police officer if the information discloses the commission of a cognizable offence. Therefore, subject to the exception carved out by sub-Section (3) of Section 173, which we will deal with later, it is mandatory to record the information in a book. Thus, it is mandatory to register the FIR if information received discloses the commission of a cognizable offence.

21. Section 154 of the CrPC reads thus:

> **"**154. Information in cognizable cases.—(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:
>
> Provided that if the information is given by the woman against whom an offence under Section 326-A, Section 326-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB, Section 376-E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:
>
> Provided further that—
>
> (*a*) in the event that the person against whom an offence under Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB], Section 376-E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking

to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(*b*) the recording of such information shall be videographed;

(*c*) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (*a*) of sub-section (5-A) of Section 164 as soon as possible.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.**"**

22. Sub-Section (1) of Section 173 of BNSS is substantially the same as Sub-Section (1) of Section 154 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC'). Therefore, the law laid down by this Court in the case of ***Lalita Kumari v. Govt. of U.P.***[2] on Section 154 of the CrPC will be relevant. Paragraph 120 of the said decision containing conclusions/directions reads thus:

[2] (2014) 2 SCC 1

"120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(*a*) Matrimonial disputes/family disputes

(*b*) Commercial offences

(*c*) Medical negligence cases

(*d*) Corruption cases

(*e*) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks' time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously

> reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.**"**
>
> (emphasis added)

23. Section 154 of the CrPC does not provide for making any preliminary inquiry. However, as held in the case of ***Lalita Kumari*[2]*,*** a preliminary inquiry is permissible if the information received does not disclose a cognizable offence and indicates the necessity for an inquiry. A preliminary inquiry must be conducted only to ascertain whether a cognizable offence is disclosed. However, sub-Section (3) of Section 173 of the BNSS makes a significant departure from Section 154 of the CrPC. It provides that when information relating to the commission of a cognizable offence which is made punishable for 3 years or more but less than 7 years is received by an officer-in-charge of a police station, with the prior permission of a superior officer as mentioned therein, the police officer is empowered to conduct a preliminary inquiry to ascertain whether there exists a *prima facie* case for proceeding in the matter. However, under Section 154 of the CrPC, as held in the case of ***Lalita Kumari*[2]*,*** only a limited preliminary inquiry is permissible to ascertain whether the information received discloses a cognizable offence. Moreover, a preliminary inquiry can be made under the CrPC only if the information does not disclose the

commission of a cognizable offence but indicates the necessity for an inquiry. Sub-Section (3) of Section 173 of the BNSS is an exception to sub-Section (1) of Section 173. In the category of cases covered by sub-Section (3), a police officer is empowered to make a preliminary inquiry to ascertain whether a *prima facie* case is made out for proceeding in the matter even if the information received discloses commission of any cognizable offence. That is very apparent as sub-Section (3) of Section 173 refers explicitly to receiving information relating to the commission of a cognizable offence. Therefore, in a case where sub-Section (3) of Section 173 is applicable, even if the information pertaining to the commission of any cognizable offence is received, an inquiry can be conducted to ascertain whether a *prima facie* case exists for proceeding in the matter. The intention appears to be to prevent the registration of FIRs in frivolous cases where punishment is up to 7 years, even if the information discloses the commission of the cognizable offence. However, under Section 154 of the CrPC, the inquiry permitted by paragraph 120.2 of the decision in the case of ***Lalita Kumari***[2] is limited only to ascertain whether the cognizable offence is disclosed.

24. Under sub-Section (3) of Section 173 of the BNSS, after holding a preliminary inquiry, if the officer comes to a conclusion that a *prima facie* case exists to proceed, he

should immediately register an FIR and proceed to investigate. But, if he is of the view that a *prima facie* case is not made out to proceed, he should immediately inform the first informant/complainant so that he can avail a remedy under sub-Section (4) of Section 173.

25. Before we go into the applicability of sub-Section (3) of Section 173 of the BNSS to the facts of the case, we must deal with sub-Section (1) of Section 173. Take a case where a person approaches an officer-in-charge of a police station either personally or by electronic communication and alleges that he has seen 'A' assaulting 'X' with a stick. If the injury caused is simple, it will be an offence punishable under Section 115 (2) of the BNS. As per the first Schedule of the BNSS, it is a non-cognizable offence. Therefore, based on such information, FIR cannot be registered. If grievous hurt is caused, it will be an offence punishable under Section 117 (2) of the BNS, which is a cognizable offence. Therefore, the allegations made in the information furnished to an officer-in-charge of a police station must be examined by the officer only with a view to ascertain whether a cognizable offence is made out. Taking the information as correct, the officer has to determine whether it makes out a case of the commission of a cognizable offence. If the allegation makes out a case of a cognizable offence, unless the offence falls in sub-Section (3) of Section 173, it is mandatory to register FIR.

26. Coming back to the offence punishable under Section 196 of the BNS to decide whether the words, either spoken or written or by sign or by visible representations or through electronic communication or otherwise, lead to the consequences provided in the Section. The police officer to whom information is furnished will have to read or hear the words written or spoken, and by taking the same as correct, decide whether an offence under Section 196 is made out. Reading of written words, or hearing spoken words will be necessary to determine whether the contents make out a case of the commission of a cognizable offence. The same is the case with offences punishable under Sections 197, 299 and 302 of the BNS. Therefore, to ascertain whether the information received by an officer-in-charge of the police station makes out a cognizable offence, the officer must consider the meaning of the spoken or written words. This act on the part of the police officer will not amount to making a preliminary inquiry which is not permissible under sub-Section (1) of Section 173.

27. We will give an example. A person utters the following words. “If the rulers attack me, I will not retaliate and, on the contrary, face the attack with love. If I do that, it will lead to the defeat of the rulers.” If the person who furnishes information, alleges that these words are spoken or written to promote enmity between different groups as provided in

Section 196, while deciding whether the information is of commission of a cognizable offence, the officer concerned will have to read and understand the meaning of the alleged spoken words. This exercise does not amount to making a preliminary inquiry which is prohibited under sub-Section (1) of Section 173 of BNSS.

28. Sub-Section (3) of Section 173 of the BNSS confers a discretion on the officer receiving information relating to the commission of a cognizable offence to conduct a preliminary inquiry to ascertain whether a *prima facie* case exists to proceed. This option is available when the offence alleged is made punishable for 3 years or more but less than 7 years. In the facts of the case, all the offences except the offence under Section 57 of the BNS are punishable by imprisonment for less than 7 years. Section 57, on the face of it, is not applicable. Therefore, this option was also available to the police officer in the present case. The officer did not exercise the said option.

29. At this stage, we may refer to clause (a) of Article 51-A of the Constitution, which reads thus:

> **"**51-A. Fundamental duties.—It shall be the duty of every citizen of India—
>
> *(a)* to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

……."

The police officers must abide by the Constitution and respect its ideals. The philosophy of the Constitution and its ideals can be found in the preamble itself. The preamble lays down that the people of India have solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure all its citizens liberty of thought, expression, belief, faith and worship. Therefore, liberty of thoughts and expression is one of the ideals of our Constitution. Article 19(1)(a) confers a fundamental right on all citizens to freedom of speech and expression. The police machinery is a part of the State within the meaning of Article 12 of the Constitution. Moreover, the police officers being citizens, are bound to abide by the Constitution. They are bound to honour and uphold freedom of speech and expression conferred on all citizens. Clause (2) of Article 19 of the Constitution carves out an exception to the fundamental right guaranteed under sub-clause (a) of clause (1) of Article 19. If there is a law covered by clause (2), its operation remains unaffected by sub-clause (a) of clause (1). We must remember that laws covered by the clause (2) are protected by way of an exception provided they impose a reasonable restriction. Article 19(2) is an exception to the freedom enumerated under Article 19(1)(a). The reasonable restrictions provided

for in Article 19(2) must remain reasonable and not fanciful and oppressive. Article 19(2) cannot be allowed to overshadow the substantive rights under Article 19(1), including the right to freedom of speech and expression. Therefore, when an allegation is of the commission of an offence covered by the law referred to in clause (2) of Article 19, if sub-Section (3) of Section 173 is applicable, it is always appropriate to conduct a preliminary inquiry to ascertain whether a *prima facie* case is made out to proceed against the accused. This will ensure that the fundamental rights guaranteed under sub-clause (a) of clause (1) of Article 19 remain protected. Therefore, in such cases, the higher police officer referred to in sub-Section (3) of Section 173 must normally grant permission to the police officer to conduct a preliminary inquiry. Therefore, when the commission of cognizable offences is alleged, where punishment is for imprisonment up to 7 years, which is based on spoken or written words, it will always be appropriate to exercise the option under sub-Section (3) of Section 173 and conduct a preliminary inquiry to ascertain whether there exists a *prima facie* case to proceed. If an option under sub-Section (3) is not exercised by the police officer in such a case, he may end up registering an FIR against a person who has exercised his fundamental right under Article 19 (1)(a) even though clause (2) of Article 19 is not attracted. If, in such cases,

the option under sub-Section (3) of Section 173 is not exercised, it will defeat the very object of incorporating sub-Section (3) of Section 173 of the BNSS and will also defeat the obligation of the police under Article 51-A (a).

30. Even while dealing with the performance of an obligation under sub-Section (1) of Section 173, where the commission of the offence is based on spoken or written words, the police officer concerned will have to keep in mind the fundamental rights guaranteed under Article 19(1)(a) read with an exception carved out under clause (2) of Article 19. The reason is that he is under an obligation to abide by the Constitution and to respect the ideals under the Constitution. The Constitution is more than 75 years old. By this time, the police officers ought to have been sensitized about their duty of abiding by the Constitution and respecting the ideals of the Constitution. If the police officers are not aware of these obligations, the State must ensure that they are educated and sensitized by starting massive training programs.

31. In the facts of the case, even without taking recourse to sub-Section (3) of Section 173 of the BNSS, the information furnished to the police officer did not attract the offences punishable under Sections 196, 197, 299 and 302 of the BNS.

STANDARD TO BE APPLIED

32. At this stage, we cannot resist the temptation of quoting what Bose and Puranik, JJ., authored as the Judges of the erstwhile Nagpur High Court. In the case of ***Bhagwati Charan Shukla v. Provincial Government, C.P. & Berar***[3]**,** in paragraph 67, it is held thus:

> **"67.** Viewing the impugned article in that light we are of opinion, as a matter of fact, that it is not seditious because its professed aim is to obtain a change of Government through the ballot box and not to incite people to a disobedience of the laws of Government. **Some extravagance of language there is, and there is the usual crude emotional appeal which is the stock in trade of the demagogue, as well as a blundering and ineffective attempt to ape the poets.** But that is all. However, it is not enough to find that the writer is not guilty of sedition because we are concerned with Section 4 of the Press (Emergency Powers) Act which travels wider than S. 124 A. We have therefore further to see whether these words tend directly or indirectly to incite to sedition, or, in the words of the Ordinance, whether they are intended or are likely to produce that effect. We say deliberately whether the words are likely to incite to sedition because, as the Federal Court points out, the formula of words used in S. 4, as also in the Ordinance, is precisely the formula used in S. 124 A,

[3] 1946 SCC OnLine MP 5

therefore to the extent of the formula the two things are the same. The only difference is that under the Press Act we have to consider not only whether there is sedition in fact but also whether the words tend, directly or indirectly, to excite to sedition and whether they are intended or are likely to produce that effect. **We pause to observe that here, as in the case of reasonable doubt in criminal cases, and as in the case of putting in fear of hurt in a matter of assault, we must use the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view.** Using those standards we hold as a fact that the effects apprehended by the Crown and required by the section are not likely to be caused by this article, nor do the words used, viewed in their proper setting, tend to cause that effect. The paper is in English. It has a limited circulation. It is read by those who know and understand English. It is a party paper and is read mainly by persons who are politically minded. They are aware of contemporary political thought and occurrences. They realise as well as any one else that neither His Excellency the Governor nor his advisers went round shooting and killing persons. They know that these acts were done by the troops and by the police. They know that there was a demand for an impartial investigation and a judicial enquiry. They know that the demand was refused and they know that the whole complaint, so far as Government is

> concerned, lies there. They are therefore no more likely to attribute to Government any greater responsibility than Mr. Jamnadas Mehta and other members of the Central Assembly did. They are as much aware as the writer that the appeal is for a constitutional change of Government by constitutional means. They were not, in our opinion, likely to interpret it otherwise. Therefore, in our judgment, the article does not tend, directly or indirectly to sedition, nor is it likely to produce that result. In out view, the applications should be allowed and the orders of forfeiture set aside. The costs should, we think, in each case be paid by the Crown.**"**
>
> (emphasis added)

33. What is held by Bose and Puranik, JJ. has been quoted with approval in at least two cases. The first such case is in the decision of ***Manzar Sayeed Khan v. State of Maharashtra***[4]. The second case is the decision in the case of ***Ramesh v. Union of India***[5]. Finally, the view taken by Bose and Puranil,JJ., as the Judges of Nagpur High Court, is again quoted with approval by this Court in the case of ***Javed Ahmad Hajam v. State of Maharashtra***[6] . This Court in the case of ***Javed Ahmad Hajam***[6] , was dealing with an offence punishable under Section 153-A of the IPC. Section 153-A of the IPC is *pari materia* with

[4] (2007) 5 SCC 1
[5] (1988) 1 SCC 668
[6] (2024) 4 SCC 156

Section 196 of the BNS. The only difference is that the words 'or through electric communication' have been added in clause (a) of Section 196 of the BNS, which were not in clause (a) of Section 153-A of the IPC. When an offence punishable under Section 196 of BNS is alleged, the effect of the spoken or written words will have to be considered based on standards of reasonable, strong-minded, firm and courageous individuals and not based on the standards of people with weak and oscillating minds. The effect of the spoken or written words cannot be judged on the basis of the standards of people who always have a sense of insecurity or of those who always perceive criticism as a threat to their power or position.

INGREDIENT OF *MENS REA*

34. In the case of ***Manzar Sayeed Khan***[4] and the case of ***Patricia Mukhim v. State of Meghalaya***[7], the ingredient of *mens rea* has been read into Section 153-A of IPC by this Court. Paragraphs 8 to 14 of the decision in the case of ***Javed Ahmad Hajam***[6], which analyses both the above decisions, read thus:

> **"8.** This Court in *Manzar Sayeed Khan* referred to the view taken by Vivian Bose, J., as a Judge of the erstwhile Nagpur High Court in *Bhagwati Charan Shukla* v. *Provincial Govt.* A Division Bench of the High Court dealt with the offence

[7] (2021) 15 SCC 35

of sedition under Section 124-AIPC and Section 4(1) of the Press (Emergency Powers) Act, 1931. The issue was whether a particular article in the press tends, directly or indirectly, to bring hatred or contempt to the Government established in law. This Court has approved this view in its decision in *Ramesh* v. *Union of India* . In the said case, this Court dealt with the issue of applicability of Section 153-AIPC. In para 13, it was held thus :

"*13. … the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view.* … It is the standard of ordinary reasonable man or as they say in English law 'the man on the top of a Clapham omnibus'.

(emphasis supplied)

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

9. We may also make a useful reference to a decision of this Court in *Patricia Mukhim* v. *State of Meghalaya*. Paras 8 to 10 of the said decision read thus :

"*8. 'It is of utmost importance to keep all speech free in order for the truth to emerge and have a civil society.*'— Thomas Jefferson. Freedom of speech and expression guaranteed by Article 19(1)(*a*) of the Constitution is a very valuable fundamental right. However, the right is not absolute. Reasonable restrictions can be placed on the right of free speech and expression in the

interest of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. Speech crime is punishable under Section 153-AIPC. Promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony is punishable with imprisonment which may extend to three years or with fine or with both under Section 153-A. As we are called upon to decide whether a prima facie case is made out against the appellant for committing offences under Sections 153-A and 505(1)(*c*), it is relevant to reproduce the provisions which are as follows:

***

9. Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquillity, the law needs to step in to prevent such an activity. *The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153-AIPC and the prosecution has to prove the existence of mens rea in order to succeed.*

10. The gist of the offence under Section 153-AIPC is the intention to promote feelings of enmity or hatred between different classes of people. The intention has to be judged primarily by the language of the piece of writing and the circumstances in which it was written and published. The matter complained of within the ambit of Section 153-A must be read as a whole.

One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning."

(emphasis in original and supplied)

10. Now, coming back to Section 153-A, clause (*a*) of sub-section (1) of Section 153-AIPC is attracted when by words, either spoken or written or by signs or by visible representations or otherwise, an attempt is made to promote disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities. The promotion of disharmony, enmity, hatred or ill will must be on the grounds of religion, race, place of birth, residence, language, caste, community or any other analogous grounds. Clause (*b*) of sub-section (1) of Section 153-AIPC will apply only when an act is committed which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities and which disturbs or is likely to disturb the public tranquillity.

11. Now, coming to the words used by the appellant on his WhatsApp status, we may note here that the first statement is that August 5 is a Black Day for Jammu and Kashmir. 5-8-2019 is the day on which Article 370 of the Constitution of India was abrogated, and two separate Union Territories of Jammu and Kashmir were formed. Further, the appellant has posted that "Article 370 was abrogated, we are not happy". On a plain reading, the

appellant intended to criticise the action of the abrogation of Article 370 of the Constitution of India. He has expressed unhappiness over the said act of abrogation. The aforesaid words do not refer to any religion, race, place of birth, residence, language, caste or community. It is a simple protest by the appellant against the decision to abrogate Article 370 of the Constitution of India and the further steps taken based on that decision. The Constitution of India, under Article 19(1)(*a*), guarantees freedom of speech and expression. Under the said guarantee, every citizen has the right to offer criticism of the action of abrogation of Article 370 or, for that matter, every decision of the State. He has the right to say he is unhappy with any decision of the State.

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

his freedom of speech and expression guaranteed by Article 19(1)(*a*).

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

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

Hence, *mens rea* will have to be read into Section 196 of the BNS. In this case, looking to the text of the words spoken and the context in which those were spoken, it is impossible to attribute any *mens rea* to the appellant.

IMPUGNED JUDGMENT

35. Now, we come to the impugned judgment. The decisions of this Court in the case of ***Manzar Sayeed Khan***[4] and ***Javed Ahmad Hajam***[6] were relied upon by the appellant before the High Court. Therefore, the High Court was aware that it was dealing with the appellant's fundamental right guaranteed under Article 19 (1)(a) of the Constitution. The High Court quoted both decisions extensively in the judgment. What is surprising is the finding recorded by the High Court. The finding on merits is only in paragraph 22 of the judgment, which reads thus:

> **"**22. Looking to the tenor of the poem, it certainly indicates something about the throne. The responses received to the said post by other persons also indicate that message was posted in a manner which certainly create disturbance in social harmony. It is expected from any citizen of India that he should behave in a manner where the communal harmony or social harmony should not be disturbed, and the petitioner, who is a Member of Parliament, is expected to behave in some more restricted manner as he is expected to know more about the repercussions of such post.**"**

36. In the instant case, as we have seen, no *prima facie* case can be said to have been made out against the appellant qua the sections invoked. In such a case, registration of the FIR appears to be a very mechanical

exercise and is a clear abuse of the process of law. In fact, registration of such FIR virtually borders on perversity. We are surprised that this very crucial aspect escaped the notice of the High Court. The High Court ought to have nipped the mischief at the threshold itself.

37. We fail to understand how the High Court concluded that the message was posted in a manner that would certainly disturb social harmony. Thereafter, the High Court gave a reason that the investigation was at a nascent stage. There is no absolute rule that when the investigation is at a nascent stage, the High Court cannot exercise its jurisdiction to quash an offence by exercising its jurisdiction under Article 226 of the Constitution of India or under Section 482 of the CrPC equivalent to Section 528 of the BNSS. When the High Court, in the given case, finds that no offence was made out on the face of it, to prevent abuse of the process of law, it can always interfere even though the investigation is at the nascent stage. It all depends on the facts and circumstances of each case as well as the nature of the offence. There is no such blanket rule putting an embargo on the powers of the High Court to quash FIR only on the ground that the investigation was at a nascent stage. If such embargo is taken as an absolute rule, it will substantially curtail the powers of the High

Court which have been laid down and recognised by this Court in the case of ***State of Haryana v. Bhajan Lal***[8].

IMPORTANCE OF THE FREEDOM OF EXPRESSION AND THE DUTY OF THE COURTS

38. Free expression of thoughts and views by individuals or groups of individuals is an integral part of a healthy, civilised society. Without freedom of expression of thoughts and views, it is impossible to lead a dignified life guaranteed by Article 21 of the Constitution. In a healthy democracy, the views, opinions or thoughts expressed by an individual or group of individuals must be countered by expressing another point of view. Even if a large number of persons dislike the views expressed by another, the right of the person to express the views must be respected and protected. Literature including poetry, dramas, films, stage shows, satire and art, make the life of human beings more meaningful. The Courts are duty-bound to uphold and enforce fundamental rights guaranteed under the Constitution of India. Sometimes, we, the Judges, may not like spoken or written words. But, still, it is our duty to uphold the fundamental right under Article 19 (1)(a). We Judges are also under an obligation to uphold the Constitution and respect its ideals. If the police or executive fail to honour and protect the fundamental

[8] 1992 Supp (1) SCC 335

rights guaranteed under Article 19 (1)(a) of the Constitution, it is the duty of the Courts to step in and protect the fundamental rights. There is no other institution which can uphold the fundamental rights of the citizens.

39. Courts, particularly the constitutional Courts, must be at the forefront to zealously protect the fundamental rights of the citizens. It is the bounden duty of the Courts to ensure that the Constitution and the ideals of the Constitution are not trampled upon. Endeavour of the courts should always be to protect and promote the fundamental rights, including the freedom of speech and expression, which is one of the most cherished rights a citizen can have in a liberal constitutional democracy. The Courts must not be seen to regulate or stifle the freedom of speech and expression. As a matter of fact, the Courts must remain ever vigilant to thwart any attempt to undermine the Constitution and the constitutional values, including the freedom of speech and expression.

40. Before we part with this judgment, we must refer to two important judgments. More than two decades ago, a Full Bench of the Bombay High Court was examining an order of the Government of Maharashtra directing forfeiture of all copies, manuscripts etc. of a play called Mee Nathuram Godse Boltoy in ***Anand Chintamani***

Dighe and anr. Vs. State of Maharashtra and ors.[9]. While quashing the order of forfeiture passed by the Government of Maharashtra, Justice Dr. D.Y. Chandrachud (as he then was) speaking for the Bench observed that Government in that particular case seemed to have acted in the wake of the criticism voiced against the play and of the sense of outrage of those who believed that the play unfairly criticized the father of the nation. He highlighted the eternal values on which the Constitution of a democracy is founded. Acceptance of the freedom to express a view which may not accord with the mainstream are cardinal values. A society wedded to the rule of law cannot trample upon the rights of those who assert views which may be regarded as unpopular or contrary to the views shared by the majority. Right of the playwright, of the artist, writer and of the poet will be reduced to husk if the freedom to portray a message – whether it be in canvas, prose or verse – is to depend upon the popular perception of the acceptability of that message. Popular perceptions cannot override constitutional values such as the guarantee of freedom. Relevant portion of the aforesaid judgment is extracted hereunder with approval:

> **"**19. …….But, it is important to realise that there are eternal values on which the Constitution of a democracy is founded.

[9] 2001 SCC OnLine Bom 891

Tolerance of a diversity of view points and the acceptance of the freedom to express of those whose thinking may not accord with the mainstream are cardinal values which lie at the very foundation of a democratic form of Government. A society wedded to the rule of law, cannot trample upon the rights of those who assert views which may be regarded as unpopular or contrary to the views shared by a majority. The law does not have to accept the views which have been expressed by the petitioner in the play in order to respect the right of the petitioner as a playwright to express those views. Respect for and tolerance of a diversity of viewpoints is what ultimately sustains a democratic society and Government. The right of the playwright, of the artist, writer and of the poet will be reduced to husk if the freedom to portray a message - whether it be in canvas, prose or verse - is to depend upon the popular perception of the acceptability of that message. Popular perceptions, however strong cannot override values which the constitution embodies as guarantees of freedom in what was always intended to be a free society."

(emphasis added)

41. In ***Shreya Singhal v. Union of India***[10], this Court was examining the vires of Section 66A of the Information Technology Act, 2000 which provided for punishment for sending offensive messages through communication service etc. In the above context the Bench referred to Article 19(1)(a), Article 19(2), Preamble to the Constitution of India and the previous decisions of this Court and after a threadbare analysis observed that when it comes to democracy, liberty of thought and expression is a cardinal value that is of paramount significance under our constitutional scheme. It is one of the most basic human rights.

42. Following is the summary of our conclusions:

(i) Sub-Section (3) of Section 173 of the BNSS makes a significant departure from Section 154 of CrPC. It provides that when information relating to the commission of a cognizable offence which is made punishable for 3 years or more but less than 7 years is received by an officer-in-charge of a police station, with the prior permission of a superior officer as mentioned therein, the police officer is empowered to conduct a preliminary inquiry to ascertain whether there exists a *prima facie* case for

[10] (2015) SCC 1

proceeding in the matter. However, under Section 154 of the CrPC, as held in the case of ***Lalita Kumari***[2]**,** only a limited preliminary inquiry is permissible to ascertain whether the information received discloses a cognizable offence. Moreover, a preliminary inquiry can be made under the CrPC only if the information does not disclose the commission of a cognizable offence but indicates the necessity for an inquiry. Sub-Section (3) of Section 173 of the BNSS is an exception to sub-Section (1) of Section 173. In the category of cases covered by sub-Section (3), a police officer is empowered to make a preliminary inquiry to ascertain whether a *prima facie* case is made out for proceeding in the matter even if the information received discloses commission of any cognizable offence.

(ii) Under sub-Section (3) of Section 173 of the BNSS, after holding a preliminary inquiry, if the officer comes to a conclusion that a *prima facie* case exists to proceed, he should immediately register an FIR and proceed to investigate. But, if he is of the view that a *prima facie* case is not made out to proceed, he should immediately inform the first informant/complainant so that

he can avail a remedy under sub-Section (4) of Section 173.

(iii) In case of the offence punishable under Section 196 of the BNS to decide whether the words, either spoken or written or by sign or by visible representations or through electronic communication or otherwise, lead to the consequences provided in the Section, the police officer to whom information is furnished will have to read or hear the words written or spoken, and by taking the same as correct, decide whether an offence under Section 196 is made out. Reading of written words, or hearing spoken words will be necessary to determine whether the contents make out a case of the commission of a cognizable offence. The same is the case with offences punishable under Sections 197, 299 and 302 of BNS. Therefore, to ascertain whether the information received by an officer-in-charge of the police station makes out a cognizable offence, the officer must consider the meaning of the spoken or written words. This act on the part of the police officer will not amount to making a preliminary inquiry which is not permissible under sub-Section (1) of Section 173.

(iv) The police officers must abide by the Constitution and respect its ideals. The philosophy of the Constitution and its ideals can be found in the preamble itself. The preamble lays down that the people of India have solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure all its citizens liberty of thought, expression, belief, faith and worship. Therefore, liberty of thought and expression is one of the ideals of our Constitution. Article 19(1)(a) confers a fundamental right on all citizens to freedom of speech and expression. The police machinery is a part of the State within the meaning of Article 12 of the Constitution. Moreover, the police officers being citizens, are bound to abide by the Constitution. They are bound to honour and uphold freedom of speech and expression conferred on all citizens.

(v) Clause (2) of Article 19 of the Constitution carves out an exception to the fundamental right guaranteed under sub-clause (a) of clause (1) of Article 19. If there is a law covered by clause (2), its operation remains unaffected by sub-clause (a) of clause (1). We must remember that laws covered by the clause (2) are protected by way of

an exception provided they impose a reasonable restriction. Therefore, when an allegation is of the commission of an offence covered by the law referred to in clause (2) of Article 19, if sub-Section (3) of Section 173 is applicable, it is always appropriate to conduct a preliminary inquiry to ascertain whether a *prima facie* case is made out to proceed against the accused. This will ensure that the fundamental rights guaranteed under sub-clause (a) of clause (1) of Article 19 remain protected. Therefore, in such cases, the higher police officer referred to in sub-Section (3) of Section 173 must normally grant permission to the police officer to conduct a preliminary inquiry.

(vi) When an offence punishable under Section 196 of BNS is alleged, the effect of the spoken or written words will have to be considered based on standards of reasonable, strong-minded, firm and courageous individuals and not based on the standards of people with weak and oscillating minds. The effect of the spoken or written words cannot be judged on the basis of the standards of people who always have a sense of insecurity or of those who always perceive criticism as a threat to their power or position.

(vii) There is no absolute rule that when the investigation is at a nascent stage, the High Court cannot exercise its jurisdiction to quash an offence by exercising its jurisdiction under Article 226 of the Constitution of India or under Section 482 of the CrPC equivalent to Section 528 of the BNSS. When the High Court, in the given case, finds that no offence was made out on the face of it, to prevent abuse of the process of law, it can always interfere even though the investigation is at the nascent stage. It all depends on the facts and circumstances of each case as well as the nature of the offence. There is no such blanket rule putting an embargo on the powers of the High Court to quash FIR only on the ground that the investigation was at a nascent stage.

(viii) Free expression of thoughts and views by individuals or group of individuals is an integral part of a healthy civilised society. Without freedom of expression of thoughts and views, it is impossible to lead a dignified life guaranteed by Article 21 of the Constitution. In a healthy democracy, the views, opinions or thoughts expressed by an individual or group of individuals must be countered by expressing another point of view. Even if a large number of

persons dislike the views expressed by another, the right of the person to express the views must be respected and protected. Literature including poetry, dramas, films, stage shows including stand-up comedy, satire and art, make the lives of human beings more meaningful. The Courts are duty-bound to uphold and enforce fundamental rights guaranteed under the Constitution of India. Sometimes, we, the Judges, may not like spoken or written words. But, still, it is our duty to uphold the fundamental right under Article 19 (1)(a). We Judges are under an obligation to uphold the Constitution and respect its ideals. If the police or executive fail to honour and protect the fundamental rights guaranteed under Article 19 (1)(a) of the Constitution, it is the duty of the Courts to step in and protect the fundamental rights. There is no other institution which can uphold the fundamental rights of the citizens.

(ix) 75 years into our republic, we cannot be seen to be so shaky on our fundamentals that mere recital of a poem or for that matter, any form of art or entertainment, such as, stand-up comedy, can be alleged to lead to animosity or hatred amongst different communities. Subscribing to

such a view would stifle all legitimate expressions of view in the public domain which is so fundamental to a free society.

43. Though this judgment is authored by one of us (Abhay S. Oka, J.), it is based on valuable inputs by Ujjal Bhuyan, J.

44. In the circumstances, the impugned order deserves to be set aside. We, accordingly, quash and set aside the impugned order. We also quash and set aside FIR No. 11202008250014 of 2025, registered with City A-Division Police Station, Jamnagar, and further proceedings based thereon. The Appeal is accordingly allowed.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

New Delhi;
March 28, 2025