IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION (STAMP) NO. 21880 OF 2022

Sandeep Arjun Kudale,
Age: 42 years, Occ: Business,
R/at : F/7, Priyay, Vibhav CHS,
Near Gandhi Bhavan, Kothrud,
Pune – 411 038 ...Petitioner

Versus

The State of Maharashtra
(Through Public Prosecutor,
High Court, Bombay) ...Respondent

WITH
CRIMINAL WRIT PETITION (STAMP) NO. 21886 OF 2022

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The State of Maharashtra
(Through Public Prosecutor,
High Court, Bombay) ...Respondent

Mr. Subodh Desai i/b Mr.Lokesh Zade for the Petitioners

Dr. B.P. Saraf, Advocate General a/w Ms. Aruna Pai, P.P, Mr. D.N. Salvi, Spl. P.P. and Mr. J.P. Yagnik, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.
RESERVED ON : 18.01.2023
PRONOUNCED ON : 27.02.2023

JUDGMENT (Per Revati Mohite Dere, J.) :

1 Since the issues/questions involved in both the aforesaid petitions are similar, they are heard together.

2 Heard learned counsel for the parties.

3 Rule. Rule is made returnable forthwith in both the aforesaid petitions, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent–State, in both the petitions.

4 The petitioner in both the petitions is same. By the aforesaid writ petitions preferred under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure ('Cr.P.C'), the petitioner in Writ Petition (Stamp) No. 21880/2022, seeks quashing of the FIR being C.R. No. 0291/2022 registered with the Kothrud Police Station, Pune, for the alleged offences punishable under Sections 153A(1)(a), 153A(1)(b) of the Indian Penal Code (`IPC') and in Writ Petition (Stamp) No. 21886/2022, seeks quashing of the FIR being C.R. No. 0489/2022 registered with the Warje Malwadi Police Station, Pune, for the alleged offences punishable under Sections 153A(1)(a), 153A(1)(b) and 505(2) of the IPC.

5 Mr. Desai, learned counsel for the petitioner submitted that taking the prosecution case as it stands, no offences as alleged are disclosed against the petitioner in both the C.Rs. According to the learned counsel, the FIRs are politically motivated, lodged with the sole intent of harassing and

browbeating the petitioner, who is a member of the Congress Party, from expressing his opinion. He submitted that infact, the petitioner came to be arrested by the police in one of the C.Rs and was in police custody for about two days, without any justification. According to the learned counsel for the petitioner, the petitioner is a law-abiding citizen, actively involved in social work. Mr. Desai submitted that the petitioner has been falsely and malafidely implicated, only because he questioned the statement of a sitting Cabinet Minister of the State. He submitted that registration of a crime for criticizing the speech given by a people's representative, clearly violates the petitioner's fundamental right to freedom of speech and expression, guaranteed under the Constitution. He submitted that it is clearly evident that the FIRs have been registered at the behest of persons affiliated to the ruling party in the State. According to the learned counsel, since none of the ingredients of the alleged offences are made out, registration of the FIRs was unwarranted and as such the said FIRs be quashed and set-aside.

6 Mr. Desai, learned counsel for the petitioner relied on the judgments of the Apex Court in ***Manzar Sayeed Khan v. State of Maharashtra & Anr.***[1], ***Balwant Singh & Anr. v. State of Punjab***[2], ***Bilal Ahmed Kaloo v. State of Andhra Pradesh***[3], ***Manik Taneja & Anr. v. State of Karnataka & Anr.***[4] and of the Bombay High Court in ***Sunaina Holey v. State of Maharashtra***[5].

7 Dr. Saraf, learned Advocate General opposed the petitions. He submitted that having regard to the provisions of law, the sections have been rightly invoked by the police. He submitted that the video uploaded by the petitioner was likely to promote enmity between different groups in the society and as such, to prevent the same, the police took prompt steps in registering the FIRs, and apprehending the petitioner. He submitted that it was necessary to do so, to ensure that public tranquility is not disturbed or likely to be disturbed, having

1 (2007) 5 SCC 1
2 (1995) 3 SCC 214
3 (1997) 7 SCC 431
4 (2015) 7 SCC 423
5 2021 SCC OnLine Bom 1127

regard to the situation prevailing then. He submitted that no interference was warranted by this Court, either under its writ jurisdiction or under its inherent powers.

FACTS :

8 A few facts as are necessary to decide the petitions are as under :

WRIT PETITION (STAMP) NO. 21880/2022:

8.1 The complainant-Abhishek Ashok Kangane, is a resident of Kothrud, Pune. According to the complainant, whilst he was browsing his Twitter account i.e. @kanganebjp, he saw a video clip uploaded by the petitioner. In the video, the complainant saw the petitioner, standing near the bungalow gate of Mr. Chandrakant Patil, Minister of Higher and Technical Education and Cabinet Minister, Maharashtra State and Palak Mantri (Guardian Minister), saying something objectionable.

According to the complainant, the said video clip was uploaded by the petitioner, on his twitter account i.e. @sandeepkudale, on 10.12.2022 at around 12:33. It is alleged by the complainant that by uploading the said video, the petitioner had provoked the feelings/sentiments of the persons belonging to Dr. Ambedkar and Mahatma Phule's community, and as such had created disharmony between the communities. The contents of the said video uploaded by the petitioner on his Twitter account is reproduced hereunder :

> **"नमस्कार, चंद्रकांतदादा पाटलांनी जे स्टेटमेंट केलेलं आहे, डॉ बाबासाहेब आंबेडकर असतील आणि महात्मा जोतीबा फुले याचे संदर्भात की, भिक मागून शाळा चालू करणे, आणि हे करणे, हे अतिशय निंदनीय स्टेटमेंट आहे, आणि मी आज कोथरूडमध्ये त्यांच्या घराजवळ येऊन रात्री बारा नंतर हा निषेध व्यक्त करतो, आणि त्यांनी नुसती माफी मागू नये, तर डॉ बाबासाहेब आंबेडकर आणि महात्मा फुलेच्या पुस्तकांचे वाचन कराव, आणि त्यांनी समाजासाठी जे योगदान दिलेले आहे, त्या बददल आपल सखोल चिंतन कराव, आणि आम्ही कॉग्रेस पक्षाची माणस आहोत, नफरत छोडो आणि भारत जोडो वाली जयहिंद"**

8.2 Accordingly, the Kothrud Police Station, Pune, on a complaint made by Abhishek Kangane, registered an FIR vide C.R. No. 0291/2022, against the petitioner, alleging offences punishable under Sections 153A(1)(a) and 153A(1)(b) of the IPC, on **11.12.2022.**

WRIT PETITION (STAMP) NO. 21886/2022:

8.3 The complainant-Sunil Babanrao Hingane is a resident of Warje, Pune. He is an active member of the BJP and a Social Worker. According to the complainant, Mr. Chandrakant Patil, Palak Mantri (Guardian Minister) of Pune District had delivered a speech during his visit at Paithan District, in which, he had mentioned the names of Dr. Babasaheb Ambedkar, Mahatma Jyotiba Phule and Karmaveer Bhaurao Patil, in a context, which was misinterpreted by the petitioner. It is the complainant's case, that the petitioner had uploaded a video-clip on social media, in which he made some derogatory remarks

against the Minister Shri Chandrakant Patil. The contents of the said video uploaded, are reproduced hereunder:

> **"चंद्रकांत पाटील तुमच्या सगळया पिढया विकत घेण्याची ताकत, उद्योजक असणा–या क्रांतिसूर्य महात्मा जोतीराव फुले यांच्यात होती. तुमच्या सारखे भिकारडयांना नाही समजणार फुले यांची ताकद! चंपाचा जाहीर निषेध."**

8.4 It is alleged that the petitioner had made the video standing outside the Minister's bungalow and had uploaded the same on social media platforms. It is alleged that the petitioner by doing so, had created an atmosphere of contempt against Mr. Chandrakant Patil and a hostile atmosphere amongst the members of the BJP. It is further alleged that the said post had promoted enmity between different groups in the society. It is also alleged that the petitioner had used derogatory words like "*Bhikardya"* and "*Champa*" against the said Minister, which had resulted in unhappiness amongst the BJP members. Pursuant thereto, the complainant lodged an FIR with the Warje Malwadi Police Station, Pune, being C.R. No. 0489/2022, alleging offences

punishable under Sections 153A(1)(a), 153A(1)(b) and 505(2) of the IPC, on **11.12.2022.**

9 The short question that arises for consideration in both the aforesaid petitions is, whether offences as alleged under Sections 153A(1)(a), 153A(1)(b) and 505(2) of the IPC are disclosed against the petitioner, in both the aforesaid C.Rs ?

10 Before we proceed to decide the same, it would be apposite to reproduce the relevant sections and the law laid down by the Apex Court in this regard.

> ***"153A. 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 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 tranquility, or*

(c) ……..”

“505. Statements conducing to public mischief.—

(1) …….

(2) ***Statements creating or promoting enmity, hatred or ill-will between classes.****—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.*

(3) ……..”

11 In ***Manzar Sayeed Khan (Supra),*** the Apex Court was called upon to consider whether an offence was made out against the author of a book, Professor James W. Laine (author of the book titled "Shivaji : Hindu King in Islamic India") and against the Printer and Publisher of the Book under Sections 153, 153A r/w 34 of the IPC. The Apex Court, whilst disposing of the appeals, in para 16, observed as under :

> *"16. Section 153-A IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquility.* ***The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-A of IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily***

> ***by the language of the book and the circumstances in which the book 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 supplied)*

12 In ***Balwant Singh (Supra),*** the Apex Court, whilst considering the prosecution case as to whether the appellants therein, by raising slogans in a crowded place, after the assassination of Smt. Indira Gandhi, the then Prime Minister of India i.e. "Khalistan Zindabad", etc. had committed an offence punishable under Sections 124A and 153A of the IPC, observed in para 9 as under :

> *"9. Insofar as the offence under Section 153-A IPC is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, linguistic or*

> *regional groups or castes or communities. In our opinion only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or affect public tranquility, that the law needs to step in to prevent such an activity.* ***The facts and circumstances of this case unmistakably show that there was no disturbance or semblance of disturbance of law and order or of public order or peace and tranquility in the area from where the appellants were apprehended while raising slogans on account of the activities of the appellants. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove the existence of mens rea in order to succeed.*** *In this case, the prosecution has not been able to establish any mens rea on the part of the appellants, as envisaged by the provisions of Section 153-A IPC, by their raising causally the three slogans a couple of times. The offence under Section 153-A IPC is, therefore, not made out.*

13 In ***Bilal Ahmed Kaloo (Supra),*** the Apex Court whilst considering the prosecution case, whether the appellants therein, by spreading news that members of the Indian Army were indulging in commission of atrocities against Kashmiri Muslims

and whether the same would attract penal consequences under Sections 153A and 505(2) of the IPC, has in para 15 observed as under :

> *"15. The common feature in both sections being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections."*

14 Similarly, in ***Manik Taneja (Supra),*** the Apex Court, whilst considering whether the appellants therein, by posting comments on the Bangalore Traffic Police Facebook page, accusing the Inspector concerned, of his misbehaviour and also forwarding an email complaining about the harassment meted out to them at the hands of the Police Inspector, constituted an offence punishable under Sections 353 and 506 of the IPC, observed in para 8 as under :

> *"8. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made, prima facie, establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit the prosecution to continue. Where, in the opinion of the Court, the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may quash the proceeding even though it may be at a preliminary stage."*

15 In ***Amish Devgan v. Union of India & Ors.***[6] and ***Manik Taneja (Supra),*** the question before the Apex Court, was whether the Managing Director of several news channels owned and operated by TV18 Broadcast Limited, in the debate ('Aar Paar' on News18 India and 'Takkar' on CNBC Awaaz), by hosting and anchoring a debate on the enactment which, while excluding Ayodhya, prohibits conversion and provides for

6 (2021) 1 SCC 1

maintenance of the religious character of places of worship as it existed on 15.08.1947. Post the telecast, 7 FIRs were registered against the petitioner therein in different States. It was alleged that the petitioner therein had, while hosting the debate, described *Pir Hazrat Moinuddin Chishti*, also known as *Pir Hazrat Khwaja Gareeb Nawaz*, as *"aakrantak Chishti aya... aakrantak Chishti aya... lootera Chishti aya... uske baad dharam badle".* Translated in English the words spoken would read – *"Terrorist Chishti came. Terrorist Chishti came. Robber Chishti came - thereafter the religion changed,*" imputing that "the *Pir Hazrat Moinuddin Chishti*, a terrorist and robber, had by fear and intimidation coerced Hindus to embrace Islam." It was alleged that the petitioner had deliberately and intentionally insulted a *Pir* or a pious saint belonging to the Muslim community, revered even by Hindus, and thereby hurt and incited religious hatred towards Muslims. The Apex Court, whilst interpreting the statutory provisions, had observed in paras 92 to 98 as under :

*"**92.** In the present case, we are not concerned with clause (c) of sub-section (1) of Section 153-A and hence we would not examine the same. Section 153-A has been interpreted by this court in Manzar Sayeed Khan and Balwant Singh and other cases. It would be, however, important to refer to the legislative history of this Section as the same was introduced by the Penal Code (Amendment) Act, 1898 on the recommendation of the Select Committee. The Section then enacted had referred to words, spoken or written, or signs or visible representation or other means that promote or attempt to promote feeling of enmity or hatred between different classes of citizens of India which shall be punished with imprisonment that may extend to two years or fine or with both. The explanation to the said Section was as under:*

> *"Explanation.– It does not amount to an offence within the meaning of this section to point out without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects."*

The original enacted Section was amended with clauses (a) and (b) by the Criminal Law (Amendment) Act, 1969 and clause (c) was subsequently inserted by the Criminal Law (Amendment) Act, 1972.

93. *The Calcutta High Court in P.K. Chakravarty (1926 SCC OnLine Cal 96 : AIR 1926 Cal 1133) had delved into the question of intention and had observed that the intention as to whether or not the person accused was promoting enmity is to be collected from the internal evidence of the words themselves, but this is not to say that other evidence cannot be looked into. Likewise, while examining the question of likelihood to promote ill-feelings the facts and circumstances of that time must be taken into account. Something must be known of the kind of people to whom the words are addressed. Words will be generally decisive, especially in those cases where the intention is expressly declared if the words used naturally, clearly or indubitably have such tendency. Then, such intention can be presumed as it is the natural result of the words used. However, the words used and their true meaning are never more than evidence of intention, and it is the real intention of the person charged that is the test. The judgment rejects the concept of constructive intention.*

94. *Similarly, the Lahore High Court in Devi Sharan Sharma had observed that intention can be deduced from internal evidence of the words as well as the general policy of the paper in which the article concerned was published, consideration of the person for whom it was written and the state of feeling between the two communities involved. In case the*

words used in the article are likely to produce hatred, they must be presumed to be intended to have that effect unless the contrary is shown.

95. *The Bombay High Court in Gopal Vinayak Godse has observed that the intention to promote enmity or hatred is not a necessary ingredient of the offence. It is enough to show that the language of the writing is of the nature calculated to promote feelings of enmity or hatred, for a person must be presumed to intend the natural consequences of his act.*

96. *The view expressed by the Bombay High Court in Gopal Vinayak Godse lays considerable emphasis on the words itself, but the view expressed in P.K. Chakravarthy and Devi Sharan Sharma take a much broader and a wider picture which, in our opinion, would be the right way to examine whether an offence under Section 153-A, clauses (1)(a) and (b) had been committed. The ordinary reasonable meaning of the matter complained of may be either the literal meaning of the published matter or what is implied in that matter or what is inferred from it. A particular imputation is capable of being conveyed means and implies it is reasonably so capable and should not be strained, forced or subjected to utterly unreasonable interpretation. We would also hold that deliberate and malicious intent is necessary and can be gathered from the words itself- satisfying the test of top of Clapham omnibus, the who factor- person*

making the comment, the targeted and non-targeted group, the context and occasion factor- the time and circumstances in which the words or speech was made, the state of feeling between the two communities, etc. and the proximate nexus with the protected harm to cumulatively satiate the test of "hate speech". "Good faith" and "no legitimate purpose" test would apply, as they are important in considering the intent factor.

97. In Balwant Singh this Court had accepted that mens rea is an essential ingredient of the offence under Section 153-A and only when the spoken or written words have the intention of creating public disorder for disturbance of law and order or affect public "tranquility", an offence can be said to be committed. This decision was relied on in Bilal Ahmed Kaloo v. State of Andhara Pradesh : (1997) 7 SCC 431, while referring to and interpreting sub-section (2) to Section 505 of the Penal Code. Similarly, in Manzar Sayeed Khan v. State of Maharashtra : (2007) 5 SCC 1, the intention to promote feeling of enmity or hatred between different classes of people was considered necessary as Section 153-A requires the intention to cause disorder or incite the people to violence. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published.

98. *In the context of Section 153-A(1)(b) we would hold that public tranquility, given the nature of the consequence in the form of punishment of imprisonment of up to three years, must be read in a restricted sense synonymous with public order and safety and not normal law and order issues that do not endanger the public interest at large. It cannot be given the widest meaning so as to fall foul of the requirement of reasonableness which is a constitutional mandate. Clause (b) of Section 153-A(1), therefore, has to be read accordingly to satisfy the constitutional mandate. We would interpret the words "public tranquility" in clause (b) to mean* ***ordre publique*** *a French term that means absence of insurrection, riot, turbulence or crimes of violence and would also include all acts which will endanger the security of the State, but not acts which disturb only serenity, and are covered by the third and widest circle of law and order. Public order also includes acts of local significance embracing a variety of conduct destroying or menacing public order. Public order in clause (2) of Article 19 nor the statutory provisions make any distinction between the majority and minority groups with reference to the population of the particular area though as we have noted above this may be of some relevance. When we accept the principle of local significance, as a sequitur we must also accept that majority and minority groups could have, in a given case, reference to a local area."*

(emphasis supplied)

16 Thus, what can be culled out from the aforesaid judgments is;

(1) It is not an absolute proposition, that one must wait for investigation to be completed before an FIR can be quashed under Section 482 Cr.PC, as the same would depend on the facts and circumstances of each case;

(2) The intention of the accused must be judged on the basis of the words used by the accused along with the surrounding circumstances;

(3) The statement in question on the basis of which the FIR has been registered against the accused must be judged on the basis of what reasonable and strong minded persons will think of the statement, and not on the basis of the views of hypersensitive persons who smell danger in every hostile point of view;

(4) In order to constitute an offence under Section 153A of the IPC, two communities must be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract Section 153A;

(5) The intention to cause disorder or incite people to violence is the *sine qua non* of the offence under Section 153A of IPC and prosecution has to prove *prima facie* the existence of *mens rea* on the part of the accused;

(6) An influential person such as "top government or executive functionary, opposition leader, political or social leader of following or a credible anchor on a T.V. show" carries more credibility and has to exercise his right to free speech with more restraint, as his/her speech will be taken more seriously than that of a "common person on the street";

(7) A citizen or even an influential person is under no obligation to avoid a controversial or sensitive topic. Even expressing an extreme opinion in a given case does not amount to hate speech;

(8) The Apex Court has reiterated the test of imminence in *Amish Devgan's* case by holding that the likelihood of harm arising out of the accused's speech must not be remote, conjectural or far-fetched.

17 Having considered the provisions of law as applied in both the cases, the judgments of the Apex Court in this regard, what is stated hereinabove, and having perused both the FIRs, we are of the considered view that no offences as alleged are made out against the petitioner, for the reasons set-out hereinunder;

REASONS :

18 A perusal of the contents of the videos uploaded by

the petitioner on social media, which have been reproduced by us, hereinabove, whilst setting out the facts, show that even if we take the contents of the video as it stands, no offences as alleged are made out against the petitioner, in both the aforesaid petitions. By no stretch of imagination, can it be said, that by the said words, the petitioner, even remotely promoted or attempted to promote, on the grounds of religion, race, place of birth, residence, language, caste or community or on any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religions, racial, language or regional groups of caste and communities. Nor can it be said that the petitioner by the said utterances, committed any act prejudicial to the maintenance of harmony between different religions, racial, language or regional groups or castes or communities, which would disturb or likely to disturb public tranquility. Although, the learned Advocate General attempted to bring the act of the petitioner, in particular, under Section 153A(1)(b) i.e. that the act of the petitioner was likely to disturb public tranquility,

warranting action by the police, we are afraid, we cannot accede to the said submission. The term "public tranquility" refers to public peace and therefore, any activity carried out by a group of individuals which results in disruption of peace in the society, is referred to as an offence against public tranquility. The IPC identifies offences against public tranquility, which have been spread over from Sections 141 to 160 of the IPC. Offences against public tranquility could be unlawful assembly, rioting, assembly of five or more people when dispersion has been ordered, affray, and promoting enmity between different classes of people. Admittedly, there was no unlawful assembly, rioting, affray, etc. It appears from the FIRs that the petitioner went near the residence of the Minister and took a video of himself outside the gate and made the comments as reproduced hereinabove, and thereafter, uploaded the same on social media. The gist of the offence of Section 153A, is the intention to promote feelings of enemity/hatred between different classes of people. The intention to cause disorder or incite the people to violence is the *sine qua*

non of the offence and the prosecution has to *prima facie* show the existence of *mens rea* on the part of the accused. The same is clearly wanting in both the cases.

19 Article 19 of the Constitution of India guarantees to every citizen a valuable fundamental right i.e. right to freedom of speech and expression. No doubt, the said freedom is not absolute and is subject to reasonable restrictions. The safeguards, as spelt out in Article 19(2) reads thus :

> *"19. Protection of certain rights regarding freedom of speech, etc.-*
>
> *(1) .....*
>
> *(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the 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."

20 The contents of the video if read in its entirety and in the background in which the same were made, does not show that the petitioner, an ordinary citizen, affiliated to a political party, had any malafide intention or the requisite *mens rea* necessary to constitute the alleged offences; nor does it appear, that it was the petitioner's intention to promote hatred or enmity, much less to disturb public tranquility or to create law and order issues. The context and genesis in which the petitioner made the comments, cannot be lightly brushed aside nor ignored. The comments would have to be weighed and considered in the context of what provoked the petitioner to make the said comments. It appears that the petitioner made the said comments pursuant to the alleged derogatory comments made by the Minister on a public

platform with respect to Dr. Babasaheb Ambedkar, Mahatma Jyotiba Phule and Karmaveer Bhaurao Patil. The petitioner had only expressed his opinion, his dissent, and condemned what was stated by the Minister. The said comments expressed by the petitioner, were clearly his opinion/criticism of the Minister's speech, registering his protest to the same and by no stretch of imagination, can be said to be an act intended to cause disorder or to incite people to violence, which is a *sine qua non* to constitute an offence under Section 153A of the IPC. It cannot be said to be an act, spreading hatred or venom, warranting the petitioner's prosecution, merely because the police apprehended breach of public tranquility or a law and order situation, as urged by the learned Advocate General. The facts did not warrant slapping of the aforesaid Sections on these flimsy grounds. The language i.e. one of the words used by the petitioner in one of the videos, at the highest, can be said to be distasteful, but certainly not warranting registration of the FIR, much less, petitioner's arrest. It is the duty of the police to maintain law and order and

the same cannot be done by invoking Section 153A so lightly, on the pretext, on which, it is done. The act of the petitioner was a non-violent act. It was a peaceful demonstration made by him alone, without taking out any procession or holding banners or arranging a public meeting. Neither did it incite violence or hatred.

21 The Constitution of India guarantees several fundamental rights to its citizens and one of the rights conferred, is, the right to freedom of speech and expression under Article 19(1)(a) of the Constitution. The said right to freedom of speech and expression enables a person to express his or her opinions freely, subject to reasonable restrictions, as spelt out in the very Article. This right guaranteed to all its citizens, is a valuable right and is the backbone of a healthy and vibrant democracy. In a way, it enshrines the principle of "liberty of thought and expression" given in the Preamble. The petitioner, as revealed from the contents of the FIR, had only expressed his

views/opinion/dissent, pursuant to what the Minister said. The act of the petitioner was well within his right to express his opinion, as guaranteed by the Constitution. Merely because the petitioner's comments hurt the complainant's sensibilities, was not a ground for the police to register the FIRs, much less arrest him.

22 It is pertinent to note that the petitioner was arrested in C.R. No. 0291/2022 and was in custody for two days, despite *prima facie,* no offence, being disclosed against the petitioner. The police, before arresting, must first apply their mind, as to whether any offence is made out or not, as an arrest visits serious consequences on the person arrested. The offences alleged have serious connotations/ramification and the police have to be mindful of the same. Invocation of the said sections has serious repercussions not only on that person's life, but also his family life, causes incalculable harm to one's reputation and even career. It cannot and must not be lightly invoked. *Prima-facie,* it appears

to us that the petitioner was slapped with the said sections, without any application of mind, when on the face of it, no such offence was made out against the petitioner.

23 Law cannot be used as a tool or as an instrument of oppression, by registering FIRs, to harrass people by preventing/intimidating them, from expressing their views/opinions/dissent, which the Constitution of India, guarantees to them. The right to express one's views is a protected and cherished right in our democracy and cannot be taken away by imposition of Section 153A of the IPC and by arresting a person as done in the present case. Section 153A cannot be resorted to silence people from expressing their views/opinions/dissent, so long as Article 19(2) is not violated. Cases under Section 153A are on the rise and the onus is on the police/State to ensure that the said provision is not misused by anyone, much less, political parties.

24 Considering what is observed hereinabove, the case of the petitioner would squarely be covered by clause (1) of para 102 of the decision of the Apex Court in the case of ***State of Haryana and Others Vs. Bhajan Lal and Others***[7]**.** The same reads thus :

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(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."*

7 1992 Supp (1) Supreme Court Cases 335

25 The petitions are accordingly allowed and the FIRs bearing C.R. No. 0291/2022 registered with the Kothrud Police Station, Pune, for the alleged offences punishable under Sections 153A(1)(a) and 153A(1)(b) of the IPC and C.R. No. 0489/2022 registered with the Warje Malwadi Police Station, Pune, for the alleged offences punishable under Sections 153A(1)(a), 153A(1)(b) and 505(2) of the IPC, are quashed and set-aside.

26 Rule is made absolute in the aforesaid terms. Petitions are disposed of accordingly.

27 Having regard to the peculiar facts of this case, we deem it appropriate to direct the State Government to pay costs of Rs.25,000/- to the petitioner, for his unjustified arrest in C.R. No. 0291/2022 registered with the Kothrud Police Station, Pune, having regard to what is observed hereinabove. The said costs shall be recovered from the salary of the person/persons

responsible for registration of the said FIR. Costs to be paid to the petitioner within four weeks from the uploading of this order.

28 Stand over to **30.03.2023,** for recording compliance of the payment of costs.

29 All concerned to act on the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J. **REVATI MOHITE DERE, J.**