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Crl.O.P. No.28737 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.11.2025

DELIVERED ON: 21.11.2025

CORAM:

THE HON'BLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P. No.28737 of 2025

Aadhav Arjuna

Petitioner

vs.

1. The State represented by
the Inspector of Police
Cyber Crime Police Station
Chennai North
(Cr. No.47 of 2025)

2. Shanmugam

Respondents

Criminal Original Petition filed under Section 528 of the Bharatiya
Nagarik Suraksha Sanhita, 2023, to call for the records pertaining to FIR
in Cr.No.47 of 2025 on the file of the first respondent police and quash
the same.

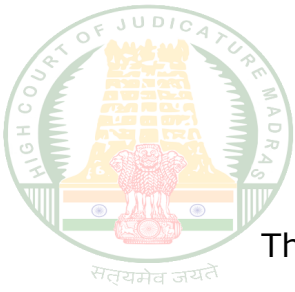
For petitioner

Dr. Abhishek Manu Singhvi, Sr. Counsel
Mr. P.V. Balasubramaniam, Sr. Counsel
Mr. K.P. Anantha Krishna
assisted by
M/s.Pranav Gopalakrishnan, Mayan H. Jain,
Yash S. Vijay, Dixita Gohil, Pranjal Agarwal &
Rupali Samuel

For R1

Mr. N.R. Elango, Senior Counsel
assisted by Mr. E. Raj Thilak
Additional Public Prosecutor

- - - - -



ORDER

This criminal original petition has been filed assailing the First Information Report in Cr.No.47 of 2025 on the file of the first respondent police¹.

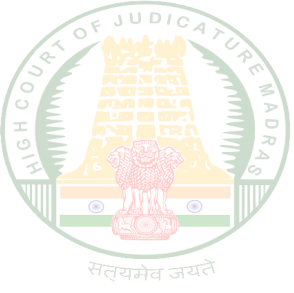
2. The second respondent/*de facto* complainant who is an LIC agent by avocation, lodged a complaint with the first respondent police on 30.09.2025 at 6 p.m. which was registered as Cr.No.47 of 2025 for the offences under Sections 192, 196(1)(b), 197(1)(d), 353(1)(b) and 353(2) of the Bharatiya Nyaya Sanhita, 2023².

3. The sum and substance of the aforesaid complaint which led to the registration of the impugned FIR is as follows:

3.1 On 29.09.2025, while the second respondent/*de facto* complainant was watching social media, he saw a post of one Aadhav Arjuna in his X platform in which he had uploaded a 30 second video where the police were seen beating the public and along with that, he had posted a content in Tamil which reads as follows:

¹ for short "the impugned FIR"

² for short "the BNS"



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CrI.O.P. No.28737 of 2



சாலையில் நடந்து சென்றாலே தடியடி....

சமூக வலைதளங்களில் கருத்து பதிவிட்டாலே
கைது...

இப்படி ஆளும் வர்க்கத்தின் அடிவருடிகளாக காவல்
துறை மாறி போனால் மீட்சிக்கு இளைஞர்களின்
புரட்சி தான் ஒரே வழி.

எப்படி இலங்கையிலும், நேபாளத்திலும்
இளைஞர்களும் ஊழ் தலைமுறையும் ஒன்றாய் கூடி
அதிகாரத்தற்கு எதிரான புரட்சியை உருவாக்கிக்
காட்டினார்களோ அதே போல இங்கும்
இளைஞர்களின் எழுச்சி நிகழும்.

அந்த எழுச்சிதான் ஆட்சி மாற்றத்திற்கான
அடித்தளமாகவும் அரசு பயங்கரவாதத்திற்கான
முடிவுரையாகவும் இருக்கப்போகிறது.

பேய் அரசாண்டால் பிணந்தின்னும் சாஸ்திரங்கள் !

3.2 The above social media post had been seen by more than 37,000 persons and thousands had shared it and he and his friends who had seen that, were shocked by the same and they feared that similar rioting and violence that took place against the Governments in Sri Lanka and Nepal would happen here too and due to that tweet, there was tension created by anti-social elements in their locality, owing to which, he and his friends in the area were tensed and lost their peace. By the tweet, the accused had intended to incite youngsters against the police, the elected Government and the sovereignty of the State. There was a possibility of creating enmity between



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the Government and the public, resulting in disturbance to law and order and public peace. While the people were agitated on account of the Karur incident, it was not proper for the accused to call people to indulge in crime against the State. This was against the sovereignty of the State and leading the youngsters in a wrong way to rebel against the sovereignty of India.

3.3 By posting this false information, he has created enmity and dissatisfaction in the minds of the youngsters to rebel against the Government and hence, action has to be taken against the accused who had posted the tweet.

Based on the above complaint, the impugned FIR was registered as stated at paragraph no.2, *supra* and seeking quashment of the impugned FIR, the instant criminal original petition has been filed.

4. Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing for the petitioner, taking this Court through the tweet made by the petitioner, submitted that the petitioner, who is the General Secretary of Tamilaga Vettri Kazhagam³, a political outfit in the State of Tamil Nadu, having seen a video of police excess at Karur during the roadshow of his

³ for short “TVK”



party leader held on 27.09.2025 (Saturday) leading to death of 41 persons, got irked by the same and posted a tweet at 11.28 p.m. on 29.09.2025; though the tweet was made by the petitioner, in 15 minutes, the same was edited and in a span of 34 minutes from the time of its original posting, *i.e.*, at 00.02 hrs. on 30.09.2025, it was deleted, which only goes to show that there is no *mens rea* on the part of the petitioner; further, when the tweet was predicated on a video on police brutality and when, concededly, the video was not fabricated and not refuted to be false either, there was no need whatsoever for registration of the impugned FIR. According to the learned Senior Counsel, the mere factum of deletion of the tweet in 34 minutes of its post, makes it loud and clear that inciting violence was not the intent of the petitioner and as such, no *mens rea* can be attributed to him.

5. Learned Senior Counsel further submitted that a plain and cursory reading of the tweet in question would make it amply clear that any religious or communal group was not the target audience and on the contrary, it focussed only on the police excesses, that too, in a non-personal manner sans unparliamentary usages and thereby, ingredients of the offences alleged will also not be made out against the petitioner.



6. The sheet anchor submission of the learned Senior Counsel is that when the petitioner had removed his tweet concerning the political situation in Sri Lanka and Nepal in approximately 15 minutes of the same being posted in his X account and also when the tweet was in existence only for a brief while spanning to 34 minutes, that too, during odd hour when the entire nation was in deep slumber, it could hardly have any impact on the masses to indulge in violence.

7. It is the further submission of the learned Senior Counsel that when Section 173(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023⁴ clearly stipulates conduct of a preliminary enquiry, registration of the impugned FIR without conducting a preliminary enquiry will defeat the very object of incorporation of sub-section (3) of Section 173 of the BNSS and will also defeat the obligation of the police under Article 51-A(a) of the Constitution of India.

8. He further contended that by no stretch of imagination, the tweet could be brought under the restrictions falling within the ambit of Article 19(2) of the Constitution of India.

⁴ for short “the BNSS”



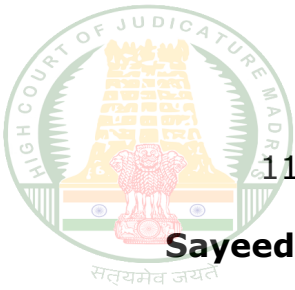
9. The learned Senior Counsel further submitted that there is no allegation in the entire FIR to the effect that the tweet in question had either paved way for or resulted in violence and in fact, no untoward incident had happened after the tweet was posted. By placing reliance on the judgment of the Supreme Court in **S.Rangarajan vs. P. Jagjivan Ram & Others**⁵, learned Senior Counsel contended that freedom of speech and expression cannot be curtailed because of any anticipated hostile reaction. By drawing this Court's attention to the judgment of the Supreme Court in **Manzar Sayeed Khan vs. State of Maharashtra & another**⁶, *supra*, it is his further contention that the effect of the tweet should 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.

10. By placing reliance on the oft-quoted and celebrated judgment of the Supreme Court in **State of Haryana & others vs. Bhajan Lal & others**⁷, wherein, parameters for quashing an FIR were laid down, learned Senior Counsel for the petitioner contended that the impugned FIR is liable to be quashed, since, even if the allegations in the FIR are taken at their face value and accepted in their entirety, they do not, *prima facie*, make out a case against the petitioner.

⁵ (1989) 2 SCC 574

⁶ (2007) 5 SCC 1

⁷ 1992 Supp (1) SCC 335

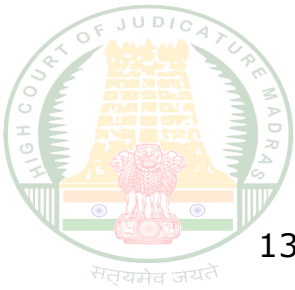


11. Relying on the judgment of the Supreme Court in **Manzar Sayeed Khan, supra** and also **Javed Ahmad Hajam vs. State of Maharashtra & another**⁸, learned Senior Counsel contended that *mens rea* will have to be read into Section 196 of the BNS and in the case on hand, the words tweeted by the petitioner, by no stretch of imagination, can attribute to *mens rea* to him.

12. Garnering support from a very recent judgment of the Supreme Court in **Imran Pratapgadhi vs. State of Gujarat**⁹, learned Senior Counsel argued that in a case involving question of freedom of speech and expression, conduct of preliminary enquiry under Section 173(3) of the BNSS is mandatory and when, indisputably, preliminary enquiry was not conducted, the impugned FIR does not have legs to stand. Taking this Court through the aforesaid judgment, learned Senior Counsel pointed out that even in the said judgment, the FIR was registered against a political leader on the basis of a post in the Twitter account and the FIR came to be quashed on the ground that no offence under Section 196 or 197 of the BNS could be made out, inasmuch as, the words used by the said political leader did not bring about or promote disharmony or feelings of hatred or ill-will and they only sought to challenge the injustice made by the Government.

⁸ (2024) 4 SCC 156

⁹ 2025 SCC OnLine 678



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13. Contending that the Court should intervene early where criminal law is deployed in cases of sensitive communal/statutory offences, learned Senior Counsel for the petitioner relied on yet another recent judgment of the Supreme Court in **Rajendra Bihari Lal and another vs. State of Uttar Pradesh and others**¹⁰.

14. In support of his contention that a citizen has a right to criticise or comment upon the measures undertaken by the Government and its functionaries so long as he does not incite people to violence against the Government or with the intention of creating public disorder, learned Senior Counsel for the petitioner invited the attention of this Court to the judgment of the Supreme Court in **Vinod Dua vs. Union of India and others**¹¹. By placing reliance on this judgment, learned Senior Counsel submitted that the tweet made by the petitioner, at best, can be termed only as an expression of disapprobation of actions of the Government and its functionaries so that the prevailing situation could be addressed quickly and efficiently. Based on these submissions, learned Senior Counsel for the petitioner submitted that the impugned FIR is liable to be quashed.

¹⁰ 2025 SCC Online 2265

¹¹ (2023) 14 SCC 286



15. *Per contra*, Mr. N.R. Elango, learned Senior Counsel for the first respondent/police, made the following submissions:

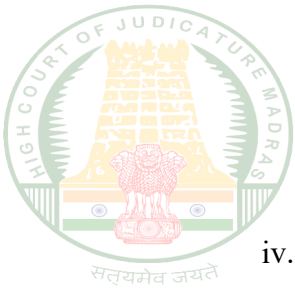
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i. Albeit the tweet existed for a paltry duration of 34 minutes, it had been viewed by 1,02,000 persons which is not a mean but whopping number;

ii. It is not that the tweet was posted by the petitioner when all was well in the State but on the heels of the Karur stampede which claimed 41 innocent lives and hence, the circumstance during which the tweet was posted is very crucial and capable of inciting violence in the State;

iii. The impugned FIR was registered only as a preventive action to stop potential dire consequences and when there are reasons to suspect commission of an offence, the first respondent police is empowered to register a case and investigate the same and there is no need to conduct a preliminary enquiry as held by a Constitution Bench of the Supreme Court in **Lalita Kumari vs. State of Uttar Pradesh**¹²;

¹² (2014) 2 SCC 1



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iv. Having used words in the tweet which are capable of inciting violence and which also have the effect of toppling the Government, inasmuch as, there was a specific reference to the political situation in Sri Lanka and Nepal, the petitioner cannot take protection under Article 19(1) of the Constitution of India and that under Article 19(2), *ibid.*, the State has the power to impose reasonable restrictions relating to certain matters, including interests of sovereignty and integrity of India, the security of the State, public order or incitement to an offence; further, the right to free speech is not absolute; in this case, the tweet is against the interest of sovereignty and integrity of India; in such circumstances, the first respondent police, finding *prima facie* material, registered the impugned FIR only after getting nod from the Joint Commissioner of Police and hence, the registration of the impugned FIR is well supported by the judgment of the Supreme Court in **Amish Devgan vs. Union of India**¹³.

v. After the 1st and 16th amendments to the Constitution of India, the emphasis is on reasonable restrictions relating to (i) interests of sovereignty and integrity of India, (ii) security of the State, (iii) friendly relations with foreign States, (iv) public order, (v) decency or morality;

¹³ (2021) 1 SCC 1



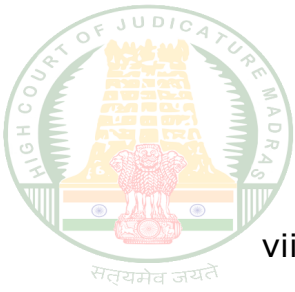
(vi) contempt of court, (vii) defamation and (viii) incitement to an offence and these eight heads of restrictions enable the State to make laws, restricting free speech in order to afford protection to (i) individuals, (ii) groups of persons, (iii) sections of society, (iv) classes of citizens, (v), the Court, (vi) the State and (vii) the country, as held by a Constitution Bench of the Supreme Court in **Kaushal Kishor vs. State of Uttar Pradesh and others**¹⁴;

vi. Though the offences under Sections 196 and 353(2) of the BNS finding place in the FIR are not currently attracted, the same may be altered by the Investigating Officer by filing an alteration report;

vii. Further, who made the tweet, what is the content of the tweet, on what occasion and under what circumstances, the tweet was made, matter a lot; in the case on hand, the petitioner not being a layman, but, on the contrary, an active member of a political party in the State and his stature being directly proportional to what he communicates to the society, is quite certain to have a serious impact on the society or a particular group of persons to indulge in violence, as held by this Court in **S.Ve. Shekher vs. Al. Gopalsamy and 4 others**¹⁵ and confirmed by the Supreme Court *vide* order dated 18.08.2023 in S.L.P. (Crl.) No.9522-9525 of 2023.

¹⁴ (2023) 4 SCC 1

¹⁵ Crl.O.P. [MD] Nos.11494 and 12163 of 2018 and Crl.O.P. Nos.5099 of 2019 and 6211 of 2021 decided on 14.07.2023



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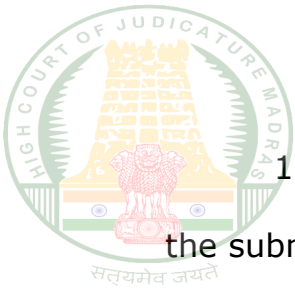
viii. The Court interfering with the FIR at the nascent stage of investigation will only encourage irresponsible conduct in the social media;

ix. Prompt registration of FIR against hate speech is in sync with the observation of the Supreme Court in **Ashwini Kumar Upadhyay vs. Union of India and others**¹⁶;

x. The factum of the petitioner having *mens rea* is a matter for investigation; the tweet was made in a situation when 41 persons lost their lives in a stampede and thus, when the atmosphere was fully charged, what would have happened is a question of fact, which is a matter for investigation and hence, the same cannot be decided at the stage of this petition under Section 528 of the BNSS, as held in **Amish Devgan, supra**; and

xi. That no untoward incident happened aftermath the tweet is only owing to the promptitude and dispatch with which the first respondent police had registered the impugned FIR and had the impugned FIR not been lodged, the effect of the tweet would have been so serious and disastrous culminating in public disorder.

¹⁶ Vide order dated 28.04.2023 in W.P. (C) No.943 of 2021



16. In reply, learned Senior Counsel for the petitioner, countering the submission made by Mr. N.R. Elango, learned Senior Counsel, that the effect of the tweet would have been serious but for the registration of the impugned FIR, submitted that the words "promotes" and "likely" in Section 153-A, the word "attempts" in Section 295-A and the words "create and promote" in Section 505 (2) IPC, convey the meaning that the chance of the event occurring should be real and not fanciful or remote; further, the standard of "not improbable" is too weak and cannot be applied as it would infringe upon and fall foul of reasonable restriction and the test of proportionality as held by the Supreme Court in **Rangarajan and Amish Devgan, supra**; in this case, nothing untoward had happened till date on account of the tweet posted by the petitioner.

17. Heard both sides and perused the materials available on record.

18. At the threshold, it will not be out of place to point out here that this matter was initially listed before a Division Bench of this Court on 27.10.2025. However, the Division Bench, on examining the contents of this petition, directed the Registry to list this petition before the Bench having roster and that is how, this matter was listed before this Bench.



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19. It is also equally not out of place to point out, at this juncture, that since the first respondent/police has been represented by Mr.N.R.Elango, learned Senior Counsel, who, in his usual style, countered the petitioner's case and justified the action of the first respondent police in registering the impugned FIR *in extenso*, this Court feels that ordering notice to the second respondent/*de facto* complainant may not be necessary.

20. Now, coming to the issue on hand, according to the petitioner, he is the General Secretary of TVK; being irked by seeing a video of police excess at Karur during the roadshow of his party leader held on 27.09.2025, leading to death of 41 persons, he posted a message in his X account [formerly Twitter account] on 29.09.2025 at 11.28 p.m., which was edited in approximately 15 minutes and eventually, deleted in 34 minutes. For better appreciation of the issue at hand, the tweet (original as well edited) is worth reproduction as under at the cost of repetition and verbosity:



Original tweet:

சாலையில் நடந்து சென்றாலே தடியடி....

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சமூக வலைதளங்களில் கருத்து பதிவிட்டாலே கைது...

இப்படி ஆளும் வர்க்கத்தின் அடிவருடிகளாக காவல் துறை மாறி போனால் மீட்சிக்கு இளைஞர்களின் புரட்சி தான் ஒரே வழி.

எப்படி இலங்கையிலும், நேபாளத்திலும் இளைஞர்களும் genz தலைமுறையும் ஒன்றாய் கூடி அதிகாரத்திற்கு எதிரான புரட்சியை உருவாக்கிக் காட்டினார்களோ அதே போல இங்கும் இளைஞர்களின் எழுச்சி நிகழும்.

அந்த எழுச்சிதான் ஆட்சி மாற்றத்திற்கான அடித்தளமாகவும் அரசு பயங்கரவாதத்திற்கான முடிவுரையாகவும் இருக்கப்போகிறது.

பேய் அரசாண்டால் பிணந்தின்னும் சாஸ்திரங்கள் !

Edited tweet:

சாலையில் நடந்து சென்றாலே தடியடி....

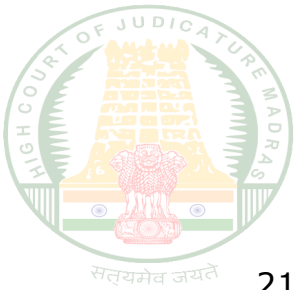
சமூக வலைதளங்களில் கருத்து பதிவிட்டாலே கைது...

இப்படி ஆளும் வர்க்கத்தின் அடிவருடிகளாக காவல் துறை மாறி போனால் மீட்சிக்கு இளைஞர்களின் புரட்சி தான் ஒரே வழி.

இளைஞர்களும் genz தலைமுறையும் ஒன்றாய் கூடி அதிகாரத்திற்கு எதிரான புரட்சியை உருவாக்கிக் காட்டினார்களோ அதே போல இங்கும் இளைஞர்களின் எழுச்சி நிகழும்.

அந்த எழுச்சிதான் ஆட்சி மாற்றத்திற்கான அடித்தளமாகவும் அரசு பயங்கரவாதத்திற்கான முடிவுரையாகவும் இருக்கப்போகிறது.

பேய் அரசாண்டால் பிணந்தின்னும் சாஸ்திரங்கள் !

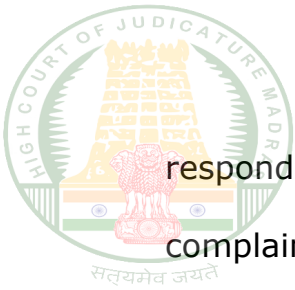


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21. A conjoint reading of the original tweet and the edited tweet would reveal that the first three words of the fourth paragraph of the original tweet, viz., “எப்படி இலங்கை கயிலும், நேபா எத்கிலும்” have been deleted in the edited tweet.

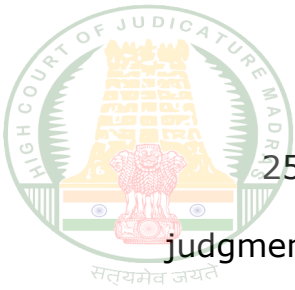
22. Be that as it may, at this juncture, it becomes imperative to state that the above tweet was posted by the petitioner on 29.09.2025 at 11.28 p.m. in the wake of loss of 41 innocent lives in the TVK party roadshow held at Karur on 27.09.2025 (Saturday). Seemingly, as submitted by the learned Senior Counsel for the petitioner, the petitioner got irked and was deeply upset on seeing a video in which the police were found attacking the TVK party workers who came forward to help the injured persons after the tragedy, which is the cause of action for his tweet.

23. As stated *supra*, the petitioner, who has posted the tweet in question, is a member of a political party and the tweet was posted at 11.28 p.m. on 29.09.2025 and it was edited approximately 15 minutes later and eventually, it was deleted in 34 minutes from the time of its original post. As is evident from the impugned FIR, it is pertinent to note that on the next day, i.e., on 30.09.2025, at 6.00 p.m., the second



respondent had lodged the complaint and on the heels of receipt of complaint, the impugned FIR had been registered against the petitioner under Sections 192 [*Wantonly giving provocation with intent to cause riot-if rioting be committed; if not committed*], 196(1)(b) [*Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony*], 197(1)(d) [*Imputations, assertions prejudicial to national integration*], 353(1)(b) and 353(2) [*Statements conducing to public mischief*] of the BNS and despatched to the Court at a breakneck speed at 6.10 p.m., i.e., in a span of 10 minutes. It is to be noted that though the second respondent/*de facto* complainant had claimed that there was apprehension of disturbance to law and order and public order and there was a sense of tension in the locality, no such untoward incident had happened till the registration of the impugned FIR and also till the date of hearing of this case.

24. This being the factual matrix, it becomes necessary for this Court to carefully analyse the tweet which forms the subject matter of this case, both legally and contextually, in the light of Indian Constitutional law and Supreme Court precedents on freedom of speech, free speech and hate speech, relied on by either side.



25. At this juncture, it is felicitous to point out that some judgments have been relied on by both sides. In other words, there is overlapping of reliance on some judgments. Yet, there are as many as four judgments of the Supreme Court which together form the bedrock of Indian jurisprudence on free speech vs. its reasonable limits and it would be profitable to have a bird's eye view of the law laid down in each of those four decisions:

25.1 In **Patricia Mukhim vs. State of Meghalaya and others**¹⁷, the Supreme Court, while quashing criminal proceedings against a journalist for a Facebook post criticizing communal violence and police inaction, explained as to when an offence under Section 153-A IPC can be said to be attracted. The relevant paragraphs of the said judgment read as under:

"6. We have heard Ms Vrinda Grover, learned counsel for the appellant and Mr Avijit Mani Tripathi, learned counsel for the State of Meghalaya. The contention of the appellant was that ingredients of the offence under Section 153-A IPC have not been made out and the FIR registered against the appellant deserves to be quashed. It was urged on behalf of the appellant that the Facebook post should be read in its entirety. The brutal attack on non-tribals was highlighted calling for suitable action against the culprits. It was submitted on behalf of the appellant that there was no intention to promote any feeling of enmity or hatred between two communities. Reliance was placed on judgments of this Court to argue that the comment made by the appellant should be judged from the standpoint of a reasonable, strong minded

¹⁷ (2021) 15 SCC 35



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and courageous man. The appellant asserted her right guaranteed under Article 19(1)(a) of the Constitution of India. She voiced her concern about the criminal prosecution resulting in a chilling effect on her fundamental right to free speech.

7. The learned counsel for the respondent State argued that the appellant is a renowned journalist and is expected to be more responsible when making public comments. The learned counsel for the State submitted that the comment of the appellant has the tendency of provoking communal disharmony. He submitted that the High Court was right in dismissing the application filed under Section 482CrPC and requested this Court to not interfere as the investigation is in progress.

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:

"153-A. 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



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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) Whoever makes, publishes or circulates any statement, rumour or report—

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

9. Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquility, 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-A IPC and the prosecution has to prove the existence of mens rea in order to succeed. [Balwant Singh v.State of Punjab, (1995) 3 SCC 214 : 1995 SCC (Cri) 432]".

(emphasis supplied by this Court)

25.2 In **Manzar Sayeed Khan**, *supra* also, the Supreme Court, explained as to when an offence under Section 153-A IPC can be said to be attracted and the relevant paragraph reads thus:

"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



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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 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.

17. In *Ramesh v. Union of India* [(1988) 1 SCC 668 : 1988 SCC (Cri) 266 : AIR 1988 SC 775] this Court held that TV serial *Tamas* did not depict communal tension and violence and the provisions of Section 153-A IPC would not apply to it. It was also not prejudicial to the national integration falling under Section 153-B IPC. Approving the observations of Vivian Bose, J. in *Bhagwati Charan Shukla v. Provincial Govt.* [AIR 1947 Nag 1] the Court observed that:

“the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. ... It is the standard of ordinary reasonable man or as they say in English law ‘the man on the top of a Clapham omnibus’.” (*Ramesh case* [(1988) 1 SCC 668 : 1988 SCC (Cri) 266 : AIR 1988 SC 775] , SCC p. 676, para 13)

18. Again in *Bilal Ahmed Kaloo v. State of A.P.* [(1997) 7 SCC 431 : 1997 SCC (Cri) 1094] it is held that the common feature in both the sections viz. Sections 153-A and 505(2), being promotion of feeling of enmity, hatred or ill will “between different” religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Further, it was observed that 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."

(emphasis supplied by this Court)

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25.3 In **Shreya Singhal vs. Union of India**¹⁸, the Supreme Court, while striking down Section 66A of the IT Act as unconstitutional and drawing a crucial distinction between advocacy, discussion and incitement, held as follows:

"47. Equally, Section 66-A has no proximate connection with incitement to commit an offence. Firstly, the information disseminated over the internet need not be information which "incites" anybody at all. Written words may be sent that may be purely in the realm of "discussion" or "advocacy" of a "particular point of view". Further, the mere causing of annoyance, inconvenience, danger, etc., or being grossly offensive or having a menacing character are not offences under the Penal Code at all. They may be ingredients of certain offences under the Penal Code but are not offences in themselves. For these reasons, Section 66-A has nothing to do with "incitement to an offence". As Section 66-A severely curtails information that may be sent on the internet based on whether it is grossly offensive, annoying, inconvenient, etc. and being unrelated to any of the eight subject-matters under Article 19(2) must, therefore, fall foul of Article 19(1)(a), and not being saved under Article 19(2), is declared as unconstitutional."

(emphasis supplied by this Court)

25.4 In **Amish Devgan, supra**, the Supreme Court, while drawing distinction between free speech and hate speech, held thus:

"78. The present case, it is stated, does not relate to "hate speech" causally connected with the harm of endangering security of the State, but with "hate speech" in the context of clauses (a) and (b) of sub-section (1) of Section 153-A, Section 295-A and sub-section (2) of Section 505 of the Penal Code. In this context, it is necessary to draw a distinction between "free speech" which includes the right to comment, favour or criticise government policies; and "hate speech" creating or spreading hatred against a targeted community or

¹⁸ (2015) 5 SCC 1



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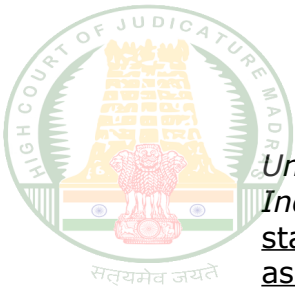


group. The former is primarily concerned with political, social and economic issues and policy matters, the latter would not primarily focus on the subject-matter but on the substance of the message which is to cause humiliation and alienation of the targeted group. The object of criminalising the latter type of speech is to protect the dignity (as explained above) and to ensure political and social equality between different identities and groups regardless of caste, creed, religion, sex, gender identity, sexual orientation, linguistic preference, etc. Freedom to express and speak is the most important condition for political democracy. Law and policies are not democratic unless they have been made and subjected to democratic process including questioning and criticism. Dissent and criticism of the elected Government's policy, when puissant, deceptive or even false would be ethically wrong, but would not invite penal action. Elected representatives in power have the right to respond and dispel suspicion. The "market place of ideas" and "pursuit of truth" principle are fully applicable. Government should be left out from adjudicating what is true or false, good or bad, valid or invalid as these aspects should be left for open discussion in the public domain. This justification is also premised on the conviction that freedom of speech serves an indispensable function in democratic governance without which the citizens cannot successfully carry out the task to convey and receive ideas. Political speech relating to government policies requires greater protection for preservation and promotion of democracy. Falsity of the accusation would not be sufficient to constitute criminal offence of "hate speech".

(emphasis supplied by this Court)

Further, at paragraph 102 of the same judgment, the Supreme Court has held that the chance of the event occurring should be real and not fanciful or remote and the standard of "not improbable" is too weak. The said paragraph reads thus:

"102. Clauses (a) and (b) to sub-section (1) of Section 153-A of the Penal Code use the words "promotes" and "likely" respectively. Similarly, Section 295-A uses the word "attempts" and sub-section (2) to Section 505 uses the words "create or promote". The word "likely" as explained above, in our opinion, convey the meaning, that the chance of the event occurring should be real and not fanciful or remote [*Tillmanns Butcheries (Pty) Ltd. v. Australasian Meat Industry Employees'*



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Union [Tillmanns Butcheries (Pty) Ltd. v. Australasian Meat Industry Employees' Union, (1979) 27 ALR 380 (Aust)]]. The standard of "not improbable" is too weak and cannot be applied as it would infringe upon and fall foul of reasonable restriction and the test of proportionality...."

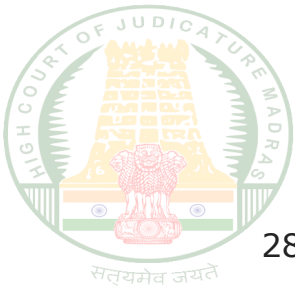
(emphasis supplied by this Court)

26. The above view was emphasized by the Supreme Court in its judgment in **S.Rangarajan**, *supra*, the relevant portion of which reads thus:

"45. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a power keg". "

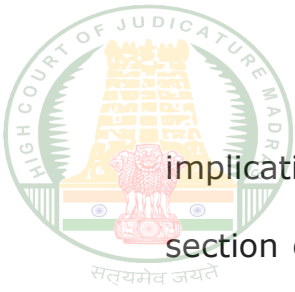
(emphasis supplied by this Court)

27. Viewed collectively and also holistically, the aforesaid authoritative pronouncements establish that freedom of speech encompasses the right to dissent, critique and express political discontent and that criminal prosecution in matters of expression must be reserved only for cases of deliberate incitement, identity-based hatred or clear threat to public order.



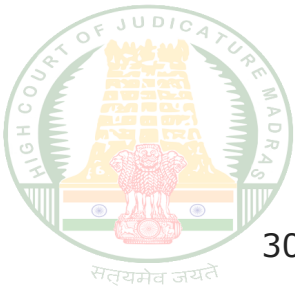
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28. While applying the principles laid down in the aforesaid four judgments to the facts of the instant case, it can safely be held that the tweet does not target any group. To expatiate in other words, the tweet does not target any caste, religion or community. In fact, though it speaks of probable uproar or protest, it does not call for violence or hatred nor does it incite anyone to indulge in imminent lawless action. Further, the tweet is only a political opinion and criticism and it does not promote hatred or enmity. Though it may be politically provocative and critical of police excess during the relevant time, it does not cross the *Lakshman rekha* so as to fall under the category of hate speech, since it does not incite violence or enmity or does not vilify any community, but, merely expresses dissatisfaction and warns of possible youth-led protests. The tenor of the tweet can only be construed as one of political dissent reflecting the petitioner's perception of public discontent, besides social concern over a tragic incident that had resulted in loss of not one or two but 41 lives. The essence of the tweet lies in political expression, which constitutes the core of the freedom guaranteed under Article 19(1)(a) of the Constitution. As held in **Shreya Singhal**, *supra*, mere discussion or advocacy, even if unpopular or uncomfortable to those in authority, cannot be curtailed, unless it reaches the threshold of incitement. In the case on hand, the tweet does not, either expressly or by necessary



implication, promote hatred, hostility or enmity against any identifiable section of society. By his tweet, the petitioner has only sought to draw a parallel between the public mood in the State and similar youth-led movements in Sri Lanka and Nepal, predicting a possible awakening or protest against perceived inefficiency of the State. Such expression, even if it carries an element of provocation or discontent, can fall only within the permissible limits of the freedom of speech guaranteed under Article 19(1)(a) of the Constitution and is not tantamount to hate speech.

29. Judged by these standards, this Court has no incertitude in holding that the tweet posted by the petitioner, is only a manifestation of political dissent and forms part of the legitimate exercise of free speech in a democratic polity and cannot, by any stretch, be brought within the mischief of hate speech under the Constitutional or penal framework and only falls well within the protective ambit of Article 19(1)(a) and cannot be branded as hate speech or incitement for imminent violence. The intention to promote enmity or incite violence must be clearly evident for criminal liability to arise, which is absent in this case. Further, as stated above, pursuant to the tweet in question, nothing untoward had happened even till the date of hearing.



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30. As regards the contention of Mr. N.R. Elango, learned Senior Counsel, that interfering with the FIR at the nascent stage of investigation will only encourage irresponsible conduct in the social media, it is apropos to point out that the Supreme Court in **Imran Pratapgadhi**, *supra*, has held in unequivocal terms at paragraph 43(vii) that there is no absolute rule that High Court cannot exercise its jurisdiction under Section 528 of the BNSS at all to quash an FIR. In the very same paragraph, the Supreme Court has further held that albeit the fact that the investigation is at its nascent stage, the FIR can be quashed.

31. With regard to conduct of preliminary enquiry, the Supreme Court, in **Imran Pratapgadhi**, *supra*, has held that in cases of allegation of commission of an offence covered by the law referred to in clause (2) of Article 19 of the Constitution of India, if sub-section (3) of Section 173 of the BNSS is applicable, it is always appropriate to conduct a preliminary enquiry to ascertain whether a *prima facie* case is made out to proceed against the accused so as to ensure that the fundamental rights guaranteed under sub-clause (a) of clause (1) of Article 19 remain protected. Therefore, when the commission of a cognizable offence is alleged which is based on spoken or written words, where punishment is for imprisonment upto seven years, it will always be appropriate to



exercise the option under sub-section (3) of Section 173 of the BNSS and conduct a preliminary enquiry 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.

32. Now, coming to the reliance placed by Mr. N.R. Elango, learned Senior Counsel, on the judgment in **S.Ve. Shekher**, *supra*, to buttress his contention that a person's stature does have a far-reaching impact and influence on the society, it is common knowledge that S.Ve. Shekher is a multi-faceted personality and a person of repute and renown in this State, he having carved out a niche in the fields of drama and cinema by his sense of humour and also in the field of politics. On the other hand, the petitioner is only a beginner in politics and ergo, he cannot be equated with a celebrity like S.Ve. Shekher. Even on facts, in **S.Ve. Shekher**, *supra*, the petitioner had posted a derogatory comment in his Facebook account about a particular class of persons, *viz.*, women



journalists, whereas, distinguishably, in the case on hand, the target audience of the petitioner's tweet is none. Hence, by no stretch of imagination, the petitioner's tweet posted in the social platform at a wee hour, can be expected to incite violence or protest, that too, when its viewership is only by a minuscule percentage of the population, that too, for a very brief period.

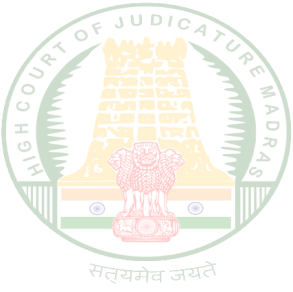
33. In this context, it will be only befitting to advert to a Constitution Bench judgment of the Supreme Court in **Padma Sundara Rao and others vs. State of Tamil Nadu and others**¹⁹ on precedents, wherein, Lord Morris was quoted. The relevant paragraph reads thus:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537:1972 AC 877 (HL) [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

(emphasis supplied)

34. Having concluded thus, what follows as a natural corollary is nothing but quashment of the impugned FIR and accordingly, the impugned FIR stands quashed.

¹⁹ (2002) 3 SCC 533



WEB COPY 35. Resultantly, this criminal original petition stands allowed.

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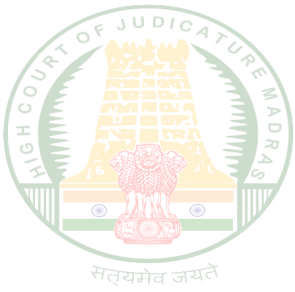
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NC : Yes/No

Index: Yes/No

To

1. The Inspector of Police
Cyber Crime Police Station
Chennai North
2. The Public Prosecutor
Madras High Court
Chennai 600 104



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Crl.O.P. No.28737 of 2



A.D. JAGADISH CHANDIRA, J.

cad

Pre-delivery order in
Crl.O.P. No.28737 of 2025

21.11.2025