



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2053 OF 2025

Kunal Kamra

... Petitioner

Versus

The State of Maharashtra
and another

... Respondents

.....

Mr. Navroz Seervai, Senior Advocate a/w. Arti Raghavan, Ashwin Thool, Ayush Singh, Archishmati Chandramore, Sarthak Bharsakle and Mohammad Abdi i/b. Meenaz Kakalia for the Petitioner.

Mr. H.S. Venegavkar, Public Prosecutor a/w. M.M. Deshmukh, APP, for the Respondent No.1-State.

Mr. Brijesh Shukla, Advocate for the Respondent No.2.

.....

CORAM : SARANG V. KOTWAL, AND
S. M. MODAK, JJ.

RESERVED ON : 16th APRIL, 2025

PRONOUNCED ON : 25th APRIL, 2025

ORDER:

1. Heard Mr. Navroz Seervai, learned Senior Counsel for the Petitioner and Mr. H.S. Venegavkar, learned Public Prosecutor for the Respondent No.1-State.

2. This Petition is filed with the main prayer for quashing of the FIR registered vide C.R. No.194/2025 at Khar Police Station, Mumbai against the Petitioner. Apart from the main prayer, there

are three other prayers in the nature of interim reliefs. The Petitioner is seeking stay of the entire investigation in connection with the said offence. He is also seeking protection from any coercive measures including arrest, seizure of his personal electronic devices and examination of his financial transactions and accounts. One more interim relief sought is for directions that no further FIRs be registered for the same cause of action.

3. Mr.Seervai made his submissions at some length on behalf of the Petitioner. The Respondent No.2, who is the original first informant, was represented by an Advocate but his learned counsel chose not to address the Court on instructions of the Respondent No.2; instead, he supported the arguments made on behalf of the Respondent No.1—the State of Maharashtra. Learned Public Prosecutor Mr. Venegavkar made his submissions in detail on behalf of the Respondent No.1. The matter was heard at the stage of admission and, therefore, we are considering as to whether the Petition deserves admission. Therefore, it is clarified that all the observations made hereinafter are strictly *prima facie* in nature for consideration of admission or otherwise of the present Writ Petition.

Since lengthy arguments were advanced before us and larger issues were raised, we deem it necessary to give some reasons in this order, but, our observations are strictly *prima facie* in nature.

4. Before referring to the submissions of both the learned counsel, very briefly the allegations in the FIR can be stated as follows :

5. The proforma of the FIR shows that it was registered at Khar police station, Mumbai vide C.R. No.194/2025 on 24.3.2025 at 11.55 a.m.. The FIR was registered under Sections 353(1)(b), 353(2) and 356(2) of the Bharatiya Nyaya Sanhita, 2023 (for short, 'BNS'). The proforma further mentions that the occurrence of the offence was dated 23.3.2025 at 9.30 p.m.. The same column No.3 of the proforma mentions that the police station received the information at 10.45 p.m. on 23.3.2025.

6. Mr. Venegavkar informed the Court that, initially, the first informant—the Respondent No.2 had approached the MIDC Andheri Police Station on 23.3.2025 at around 10.45 p.m.. According to the police officers, the jurisdiction was with the Khar police station.

Therefore, the Station House Officer of MIDC Andheri police station, after verifying the facts, registered an FIR vide 'O' number at 12.23 a.m. on 24.3.2025 i.e. around the midnight between 23.3.2025 and 24.3.2025. Thereafter it was transferred to Khar police station and it was registered at Khar police station at 11.55 a.m. on 24.3.2025 vide C.R. No.194/2025.

7. The first informant has stated that he was a Member of Legislative Assembly since 2024. He was elected from Andheri (East) Constituency. He is a Member of 'Shiv Sena', which is a political Party. Shri Eknath Shinde is the current Deputy Chief Minister of Maharashtra. On 23.3.2025 at around 9.30 p.m., the informant received a video link from one of his Party workers. The informant opened the link and saw the video. He saw that it was a video-clip in respect of a Stand-up Comedy Show of the Petitioner organized at Continental Hotel, Khar (West), Mumbai. The FIR thereafter goes on to mention the utterances made by the Petitioner during that show. In the first part of the utterances, which are reproduced in the FIR, there were some comments about the political situation and the conduct of the political parties, which

according to the Petitioner had confused everyone. After these comments, there is a reference to Thane District and then there is physical description of a person and a reference of his earlier life when he was plying a rickshaw for earning his livelihood. There was a reference to his visit to Guwahati. That person was referred as a person prone to cheating the political parties and that he was not a Minister. It was further mentioned that from the Petitioner's point of view, he looked as a traitor. Then he has uttered certain words which are necessary to be produced in the original language as mentioned in the FIR : "*Jis thali me khaye usme hi voh chhed kar jaye. Mantralaya se jyada Fadanvis ki godi mein mil jaye*". He had got the bow and arrow. Then there is a reference that he had stolen somebody's father; and there is an abusive word used in the same sentence. It is further mentioned that the Petitioner has defamed Shri Eknath Shinde with reference to his ethics and conduct. Those utterances, according to the informant, were creating hatred between the two political parties and, therefore, the first informant had lodged his FIR.

8. After the FIR was registered, the police started the

investigation and started recording the statements. Mr.Seervai submitted that even the persons who had attended the show were called for recording their statements. The Petitioner was sent a notice dated 24.3.2025 under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS') calling upon him to appear before the Khar police station at 10.30 a.m. on 25.3.2025. It was mentioned in the notice issued in pursuance of sub-section (3) of Section 35 of the BNSS, that since it was revealed that there were reasonable grounds to question the Petitioner to ascertain the facts and circumstances from him in relation to the present investigation, he was required to attend the Police Station.

9. The Petitioner replied to that notice informing the police that he, at that time, was residing in Pondicherry and it would be difficult for him to travel to Mumbai on such a short notice. He further mentioned that he would cooperate with the on-going investigation and sought a week's time to appear before the police on 2.4.2025; and in the meantime he showed his willingness to appear via Video Conferencing at a convenient time. This reply was received by the police on 25.3.2025.

10. The police then sent a reminder on 26.3.2025 asking him to appear before the police on 31.3.2025. This time, the Petitioner sent a reply dated 27.3.2025 informing the police that he had received numerous threats including death threats on email, through social media and through phone calls. The senior political leaders had threatened to harm him if he was seen in Mumbai. The venue of his Stand-up Comedy Show was vandalized. He made a grievance that his communication with the police was reaching the media and in those circumstances he requested that he be permitted to appear through Video Conferencing for any questioning and that he be granted three weeks' time to appear before the police in person.

11. In the meantime, the Petitioner approached the High Court of Judicature at Madras for transit anticipatory bail wherein he was granted interim protection vide the order dated 28.3.2025 passed in CrI.O.P. No.9768/2025. It was extended upto 17.4.2025. After he was granted interim protection on 28.3.2025, this Petition was filed before this Court on 5.4.2025.

12. In this background, the arguments were advanced before

us.

SUBMISSIONS OF MR.SEERVAI LEARNED SENIOR COUNSEL FOR THE PETITIONER :

13. Mr.Seervai made submissions on various aspects and relied on some judgments. His submissions can be summarized as follows :

- i. None of the Sections under which the FIR is lodged is attracted. None of the ingredients of any of those Sections are applicable in the facts of the present case. Therefore, it was a fit case for staying the investigation even at this stage. The issues raised in this Petition involve the protection of fundamental right of freedom of speech guaranteed under Article 19(1)(a) of the Constitution of India, which has to be read along with Articles 21 and 14 of the Constitution.
- ii. The action on the part of the police is nothing but illegal censorship of a Stand-up Comedy Show. The FIR is lodged by the Respondent No.2 as well as by the police with malafide intentions by misusing the State machinery. If registration of such FIRs is permitted, it would have a chilling effect on the

right of freedom of speech.

- iii. The investigation and the subsequent events show that it has terrorized an artiste when he had expressed his own views which he could have expressed in exercise of his right to freedom of speech. The time-line of registration of the FIR shows that it was registered with *malafide* intentions showing undue haste and pre-determined intention to carry out the investigation to pressurize the Petitioner.
- iv. If it was the case of the informant that the utterances amounted to defamation of Shri Eknath Shinde, even then registration of FIR was not permissible because there is a special provision viz. Section 222 of the BNSS. The police could not have registered an FIR under Section 356 of the BNS which specifically deals with defamation of a person.
- v. Before registration of an FIR, preliminary enquiry required under Section 173(3) of BNSS was not conducted.

14. Mr.Seervai further invited our attention to these Sections and made his submissions with reference to the ingredients of each

of these Sections. Mr.Seervai submitted that the investigation itself is malafide which can be seen from the fact that innocent people who have merely attended the Stand-Up Comedy Show were called for recording of their statements. The Petitioner had given sixty such performances in the past seven months and only in the present case suddenly after so many days, the FIR is lodged.

15. Mr.Seervai invited our attention, in particular, to Paragraph Nos.9 and 10 of the Petition regarding the concept of the Petitioner's show. It is mentioned in those paragraphs that the show 'Naya Bharat' touched upon various other aspects as well. Mr.Seervai submitted that the Show only reflected the political events which had taken place in June, 2022 when the Government had changed in Maharashtra.

16. Mr.Seervai submitted that in the past, various people including the senior leaders from the present alliance of Shri Eknath Shinde had called his group as traitors. The opposing political parties have also called Mr. Shinde as a traitor in the past. No grievance was made by registering the FIR or complaint on those occasions. Therefore, targeting the Petitioner through this FIR

is unreasonable and unjustified.

17. In support of his submissions, Mr.Seervai relied heavily on the observations made by the Hon'ble Supreme Court in the case of **Imran Pratapgadhi Vs. State of Gujarat and another**¹. Mr.Seervai also relied on the observations made by the Hon'ble Supreme Court in the case of **Indibily Creative Private Limited and others Vs. Government of West Bengal and others**² and in the case of **Bilal Ahmed Kaloo Vs. State of A.P.**³. Mr.Seervai referred to some other judgments, but, his reliance was mainly on the aforementioned judgments. The other judgments cited by Mr.Seervai are considered, only if necessary, in the following discussion.

18. Apart from these judgments with reference to the facts of the case, Mr.Seervai relied on some Supreme Court Judgments, and submitted that this Court has ample power to interfere and quash the proceedings. He referred to the judgment in the case of **State of Haryana and others Vs. Bhajan Lal and others**⁴.

19. Mr.Seervai relied on the cases of **Arnab Manoranjan**

1 Decided on 28.3.2025 in Criminal Appeal No.1545/2025

2 (2020) 12 SCC 436

3 (1997) 7 SCC 431

4 1992 Supp (1) SCC 335

Goswami Vs. State of Maharashtra and others⁵ and Neeharika Infrastructure Private Limited Vs. State of Maharashtra and others⁶.

20. On the other hand, Mr. Venegavkar opposed each of these submissions as follows :

SUBMISSIONS OF SHRI VENEGAVKAR ON BEHALF OF THE RESPONDENT NO.1 – STATE OF MAHARASHTRA :

21. Mr. Venegavkar submitted that the FIR was not lodged in haste. The officer in-charge of the MIDC Andheri police station conducted the preliminary enquiry. He saw the video himself. He verified that it was uploaded on social media channel and only after confirming those facts, the FIR was lodged. The proper police station having jurisdiction was Khar police station within which that Show was conducted and, therefore, it was transferred to Khar police station. There is nothing wrong in the procedure and it cannot be said that the action of the police was malafide. Once the investigation started, the police were duty bound to record the statements and investigate the matter. In that context, the Petitioner was called to give his statement.

5 (2021) 2 SCC 427

6 2021 SCC OnLine SC 315

22. Mr. Venegavkar submitted that if a cognizable offence was made out in the allegations made by the first informant, the police were duty bound to register an FIR; and in such cases, the accused cannot take support of Article 19 of the Constitution. Mr. Venegavkar read out the entire FIR in its original version, where the utterances were reproduced *ad verbatim*. He submitted that the utterances are not only in bad taste but there is a direct personal attack on the person who is the Deputy Chief Minister of Maharashtra. It is not an innocuous criticism on his actions but Shri Shinde is personally targeted. It is not a mere political satire. The words used are lowering the dignity of Shri Shinde. The utterances and the sentence making reference to Shri Shinde includes abusive language. By no stretch of imagination it can be said that those utterances are permissible under the wide spectrum of Article 19 of the Constitution regarding the freedom of speech. There is a difference between the humorous criticism and malicious attack on one particular individual.

23. In this case the investigation is necessary to find out the truth and motive behind these allegations. Mr. Venegavkar made

certain submissions in respect of Section 353(1)(b) and Section 356 of BNS; but both these Sections are non-cognizable. He submitted that since Section 353(2) of BNS is applied, which is a cognizable offence, the police were empowered to investigate the FIR which attracts other offences which may be non-cognizable in nature. He submitted that under Section 353(2) of BNS, there is no dispute that the video was published and circulated. According to Mr. Venegavkar it was based on false information, rumour or alarming news. It was spread with intent to create or promote feelings of enmity, hatred or ill-will between different regional groups or castes or communities.

24. Mr. Venegavkar referred to Law Lexicon and in particular referred to P. Ramanatha Aiyar's 'Advanced Law Lexicon' 4th Edition, wherein according to Mr. Venegavkar the meaning of 'community' includes a society having common political interests. Therefore, according to Mr. Venegavkar the informant's Party and the rival Party could develop ill-will because of this video. Shri Shinde is the Leader of the informant's Party. Therefore, according to Mr. Venegavkar the ingredients of Section 353(2) of BNS are made

out in this case.

25. Mr. Venegavkar submitted that the investigation is at the initial stage and, therefore, it cannot be quashed. The Petitioner is an experienced artist in his field and has many followers. He knows the consequences of his words and, therefore, his knowledge and intention can be gathered from his words itself.

26. Only because no action was taken against anybody else for calling Shri Shinde a traitor, does not mean that the others can be permitted to go on making such utterances harming Shri Shinde's reputation and dignity. The theory of equality does not apply to the wrong doers. Mr. Venegavkar particularly referred to the abusive word used in the same sentence. He submitted that by no stretch of imagination, such utterance can be termed as innocuous exercise of the right of 'freedom of speech'. The fundamental right of freedom of speech comes with a caveat. In this case, the Petitioner has crossed the line and has committed an offence. The dignity and rights of the makers of the statements is important, but, the dignity and reputation of the person against whom it is made is also important. This should not be overlooked.

Mr. Venegavkar referred to the aforementioned judgment of the Hon'ble Supreme Court in the case of **Pratapgadhi** itself and invited our attention to certain paragraphs to contend that the right of freedom of speech is not an uncontrolled right and it is controlled by Article 19(2) of the Constitution.

REASONS :

27. The main issue which requires serious consideration in this particular case is whether Section 353(2) of BNS is applicable because as mentioned earlier the other two Sections applied in this case by the police i.e. Sections 353(1)(b) and 356(2) of BNS are non-cognizable. As rightly submitted by Mr. Venegavkar if the police are investigating a cognizable case then they are empowered to carry out the investigation which may attract other offences which could be non-cognizable in nature. This submission is based on Sub-section (4) of Section 174 of BNSS, which reads thus :

“**174.** Information as to non-cognizable cases and investigation of such cases.

(1) xxxx

(2) xxxx

(3) xxxx

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.”

28. In this case, if Section 353(2) of BNS is not made out then inspite of the fact that other offences i.e. Sections 353(1) and 356 of BNS are applied, the police do not get power to register the FIR and investigate the offences. Therefore, it is necessary to concentrate on Section 353(2) of BNS which reads thus :

“353: Statements conducing to public mischief.

(1) xxxxx

(2) Whoever makes, publishes or circulates any statement or report containing false information, rumour or alarming news, including through electronic means, 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.”

. The first part of this sub-section refers to making, publishing or circulating any statement. There is hardly any

dispute that the video in this particular case was published and circulated.

29. The next consideration is about the false information, rumor or alarming news. In this case, the reference to Shri Shinde's conduct are made by the Petitioner. According to Mr. Seervai, the utterances refer to a political situation. It cannot be termed as 'false information' or 'rumour' or 'alarming news'. The other main ingredient is about the intent behind making those statements. In this context, it is necessary to see whether such utterances were made with intent to create or promote or which was likely to create or promote feelings of enmity, hatred or ill will on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever. In this part of the definition, the words 'any other ground whatsoever' have a wide scope for interpretation. The last part of the definition deals with feelings of enmity, hatred or ill will between different groups or castes or communities. Mr. Venegavkar submitted that the word 'community' is important and a political party would be included in the word 'community'. There is no reference to religious, racial,

language or regional groups or castes in this particular case. Mr.Venegavkar emphasized on the word 'communities' in this part of the definition.

30. To these submissions, Mr.Seervai took a strong exception. He submitted that the 'communities' would not include political parties. There is a reference to the Political Party of Shri Shinde. In this context, Mr.Seervai referred to the observations of the Hon'ble Supreme Court in the case of **Bilal Ahmed Kaloo**. Paragraph-15 of the said judgment reads thus :

“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.”

According to Mr. Seervai though this judgment was based with reference to Section 153(A) and 505 of IPC, the observations are applicable to Section 353(2) of BNS. At the highest there is a reference to the Political Party of Shri Shinde without any reference

to any other community or group and, therefore, Section 353(2) of BNS is not attracted.

31. Mr. Venegavkar referred to Law Lexicon, referred to hereinabove. However, that particular explanation is given when community was considered in the context of mutuality and unity. The exact reference in the said definition, referred to by Mr. Venegavkar is as follows :

“COMMUNITY : MUTUALITY : UNITY. A species of partnership interest arising upon marriage in property acquired during coverture, -- legal when it arises by operations of law, conventional when created by express contract, a society having common political interests.”

. But this particular explanation is not backed by any particular judgment; whereas the word ‘community’ is explained through various judgments in that particular edition of P. Ramanatha Aiyar’s ‘Advanced Law Lexicon’.

32. In other words, it is necessary to interpret the scope of Section 353(2) of BNS which requires serious consideration.

33. Mr. Venegavkar submitted that the utterances have specifically targeted Shri Eknath Shinde, the Deputy Chief Minister

of Maharashtra. The definition of ‘defamation’ given under Section 356(1) of BNS is as follows :

“356. Defamation.

(1) Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes in any manner, any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.---It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.--- xxxxxx

Explanation 3.--- xxxxxx

Explanation 4.---No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.”

. There are certain exceptions under the said Section which can be raised as defence by the accused. The offence of defamation

is made punishable under Section 356(2) of the BNS which is applied in the present case. However, the procedure for taking cognizance for the offences under Section 356 of BNS is provided under Section 222 of the BNSS, which reads thus :

“222. Prosecution for defamation.

(1) No Court shall take cognizance of an offence punishable under section 356 of the Bharatiya Nyaya Sanhita, 2023 except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is a child, or is of unsound mind or is having intellectual disability or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Sanhita, when any offence falling under section 356 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the

Public Prosecutor except with the previous sanction—

(a) of the State Government,—

(i) in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(ii) in the case of any other public servant employed in connection with the affairs of the State;

(b) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.”

. Thus, a special different procedure is prescribed for prosecution for defamation. The section provides as to how a complaint has to be made and by whom it can be made. This particular procedure is available for any such person mentioned in this Section. Mr. Venegavkar submitted that Section 356 of BNS is rightly applied in this offence. But then, as we have pointed out, procedure under Section 222 of the BNSS will have to be separately followed.

34. Mr.Seervai relied heavily on the observations of the

Hon'ble Supreme Court in **Pratapgadhi's** case. The observations are in respect of Article 19(1)(a) of the Constitution as well as are on the point of necessity of conducting preliminary enquiry under Section 173(3) of BNSS. Mr. Venegavkar submitted that the preliminary enquiry in this case is conducted before registration of the FIR. The scope and manner of enquiry will have to be tested at the final hearing stage of this Petition.

35. The Hon'ble Supreme Court in **Pratapgadhi's** case has referred to another judgment of the erstwhile Nagpur High Court in the case of **Bhagwati Charan Shukla Vs. Provincial Government, C.P. & Berar**⁷ wherein it was observed that in the case of putting in fear of hurt in a matter of assault, the standard which is to be used has to be 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. Mr.Seervai relied on these observations that the utterances will have to be tested by these yardsticks. Mr.Seervai also relied on the observations in Paragraph-38 of the **Pratapgadhi's** case which reads thus :

7 1946 SCC OnLine MP 5

“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 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.”

36. On the other hand, Mr. Venegavkar relied on the

observations of the Hon'ble Supreme Court in the same judgment made in paragraph-34 wherein another judgment of the Hon'ble Supreme Court in the case of **Javed Ahmad Hajam Vs. State of Maharashtra**⁸ was considered in which it was observed that 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. 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.

37. In the case of **Indibily Creative Private Limited**, the Hon'ble Supreme Court had observed that satire is a literary genre where "topical issues" are "held up to scorn by means of ridicule or irony". It is one of the most effective art forms revealing the absurdities, hypocrisies and contradictions in so much of life. It has the unique ability to quickly and clearly make a point and facilitate understanding in ways that other forms of communication and expression often do not. By referring to another judgment, the

⁸ (2024) 4 SCC 156

Hon'ble Supreme Court observed that debate on political issues would be uninhibited, robust and wide open. It may well include vehement, sarcastic and sometimes unpleasant sharp criticism of government and public officials. A reference was made to the observations of the Single Judge of Patna High Court in the case of **Vishesh Verma Vs. State of Bihar**⁹. It was observed that, a creative artist is free to project the picture of society of the political system or the person in politics in the manner he perceives. They can make pungent political satire of political leaders or system subject of course to decency, morality and public order. Legitimate creation by a creative artist cannot be gagged or suppressed on the ground of intolerance of a section of super sensitive people not used to hearing dissent. This is the essence of democracy.

38. Thus, there are larger issues of fundamental right of freedom of speech guaranteed under Article 19(1)(a) of the Constitution canvassed by Mr.Seervai against the restrictions put on that right under Article 19(2) as canvassed by Mr. Venegavkar which included the aspect of decency, morality and public order.

9 2008 SC OnLine Patna 156

39. All these questions raised by both the sides deserve serious consideration. Hence, arguable points are raised and, therefore, we are inclined to admit this Petition.

40. The next question is regarding the interim relief which needs to be granted in this case. In this context, we are guided by the conclusions recorded by the Hon'ble Supreme Court in Paragraph-80 of **Neeharika's** case. Paragraph-80 reads thus :

“80. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

(i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in

Chapter XIV of the Code to investigate into a cognizable offence;

(ii) Courts would not thwart any investigation into the cognizable offences;

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

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

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

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

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

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

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

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

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

(xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

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

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

(xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power

under Section 482 Cr.P.C, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

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

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

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

41. In the background of the above discussion, we are not inclined to grant complete stay on the investigation of this case which is still in progress. The Petitioner has also shown willingness to give his own statement. It is the case of the Petitioner that he has been receiving death threats, therefore, his security is of concern. To that extent, some protection can be granted to him. Learned counsel for the Petitioner has submitted that the statement

can be recorded in Chennai if reasonable notice is given to the Petitioner. Therefore, the investigation can continue, however, it is not necessary to arrest the Petitioner. The police themselves have sent him a notice under Section 35(3) of the BNSS. Section 35(3) of the BNSS reads thus :

“35. When police may arrest without warrant.

XXXXX

XXXXX

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.”

. Since a notice under Section 35(3) of BNSS is given to the Petitioner, the arrest of the Petitioner is not necessary. The investigation can be continued without his arrest. At the same time, since serious issues are being considered in this Petition it is necessary to give further protection to the Petitioner in case the charge-sheet is filed so that the present Petition does not become infructuous. In that context, the trial Court can be directed not to

proceed against the Petitioner if the charge-sheet is filed.

42. Considering the above discussion, the following order is passed :

:: O R D E R ::

- [i] Rule.
- [ii] The Petitioner shall not be arrested in connection with the C.R. No.194/2025 registered at Khar Police Station, Mumbai, during pendency of this Petition. However, the investigation in this case can continue.
- [iii] If the Investigating Agency wants to record the Petitioner's statement, it can be recorded at Chennai with the help of the local police, after giving notice of reasonable period to the Petitioner so that he can remain present in Chennai.
- [iv] If during pendency of this Petition the charge-sheet is filed, the concerned Court shall not proceed against the Petitioner, during pendency of this Petition.

(S.M. MODAK, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
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