IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M.P. No. 2810 of 2018
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1. J Vikash Korah
2. Dharm Kishor Kullu
3. Emil Walter Kandulna
4. Ghanshyam Biruly ... ... **Petitioners**

Versus

1. State of Jharkhand
2. Superintendent of Police, Khunti
3. Rajesh Prasad Rajak, Station Incharge, Khunti Police Station, Upar Chowk, National Highway 75, Jannat Ganar, P.O. Khunti, P.S. Khunti, District Khunti

... ... **Opposite Parties**

CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

For the Petitioners : Mr. Prem Mardi, Advocate
For the State : Mr. R.R. Mishra, G.P. II

C.A.V. ORDER

07/22.07.2019 Heard Mr. Prem Mardi, learned counsel for the petitioners and Mr. R.R. Mishra, learned G.P. II for the State.

2. In this application, the petitioner has prayed for quashing of the entire criminal proceedings in connection with Khunti P.S. Case No. 124 of 2018, corresponding to G.R. No. 287 of 2018, registered for the offences punishable under Sections 121A/121/124A of the Indian Penal Code and Sections 66A and 66F of the Information Technology Act.

3. The prosecution story in brief is that an incident of abduction had taken place on 26.06.2017 of the security personnel attached with Shri Kariya Munda, Member of Parliament. On search made by the Police personnel at village Ghaghra in the District of Khunti they were stopped by the villagers who were variously armed. It has been stated that the Police through loud speakers tried to pacify the villagers in order to make them understand not to take law into their own hands and release the abducted security personnel. Allegation has further been levelled that the Police personnel were verbally abused the whole night and again in the morning the villagers were tried to be persuaded to release

the abducted Police personnel and since it failed the assembled crowd were declared as unlawful. The Police were attacked by the villagers with stones, bows and arrows, axes etc., which resulted in some of them sustaining injuries. On secret information it was learnt that the incident happened because the innocent tribals were misled and influenced in the name of 'Adivasi Mahashabha' and 'A.C. Bharat Sarkar Kutumbh Pariwar' who had distorted the Constitution through social media and were spreading anti national feelings as well as disturbing the harmony existing between the different groups and castes.

4. Based on the aforesaid allegations Khunti P.S. Case No. 124 of 2018 was registered for the offences punishable under Sections 121A/121/124A of the Indian Penal Code and Sections 66A and 66F of the Information Technology Act.

5. Mr. Prem Mardi, learned counsel for the petitioners has submitted that from the First Information Report prima facie no criminal offence is made out against the petitioners. It has been stated that *Pathargari* in its strictest sense is not criminal in nature and practicing the same would not invite criminal prosecution. It has further been submitted that there are several types of *Pathargaris* which are practiced but there is no description by the prosecution as to which form of *Pathargari* was violated. In fact the non-tribals are not aware about the true meaning and purport of the term *Pathargari* and which has led to a distorted version in the First Information Report by claiming that the petitioners had committed a seditious act by wrong interpretation of the Constitution of India. Learned counsel for the petitioners further submits that describing *Pathargari* vis-a-vis the constitutional provisions enshrined in the same in a different manner in Facebook would not amount to a crime or an act of sedition against the petitioners or under

the provisions of the Information Technology Act. Learned counsel also submits that the petitioners cannot be prosecuted for an incident which had taken place at village Ghaghra, Khunti merely on the assumption that the villagers have been influenced on the act of the petitioners through Facebook as mere discussion initiated by submitting posts in Facebook would not attract any criminal offence so far as the petitioners are concerned. Mr. Mardi has also referred to the Declaration on Rights of Indigenous People by the United Nation and stated that India was bound by its declaration to promote the indigenous people by accepting the United Nation Resolution. It has further been submitted that Section 482 Cr.P.C. can be maintained in a case of this nature since the petitioners have been unnecessarily prosecuted and therefore this Court can exercise its power under Section 482 Cr.P.C. in quashing the entire criminal proceedings if the allegations on the face of it suggests absurdity and shorn of any offence as alleged by the prosecution. Mr. Mardi learned counsel for the petitioners has elaborated his argument by stating that the true meaning and purport of *Pathargari* has to be considered and in such context it is to seen as to whether the alleged act on the part of the petitioners would amount to a seditious activity. In such context he has referred to “Encyclopaedia Mundarica” authored by Rev. John Hoffmann, SJ and Rev. Arthur Van Emelen, SJ and other Jesuit Missionaries. He has submitted that *Paathalgari* is a century old tradition and has been described by 'L.S.S. O'malley' in his “Bengal District Gazetteers Singhbhum Saraikela and Kharsawan”. He has stated that in the said gazetteer the practice and culture of the 'Munda' tribe as well as the 'Hos' have been described with respect to the primitive form which is still in practice and the consequence of a burial of an ancestor of the said tribes. It has been submitted while referring to the book “Social Exclusion and Adverse Inclusion,

Development and Deprivation of Adivasis in India" edited by 'Dev Nathan' and 'Virginius Xaxa' by stating that there is a religious identity attached with the term *Pathargari* as the tribal people believe that their guardian spirits are all over the earth- the Hills, the Rocks, the Forests, the Water bodies the fields and the village boundaries to mention a few. It has been stated that the cultural and religious practices as well as the organizational systems centre around the land so far as the tribal people are concerned and the same is in a holistic sense at the root of the tribal identity. Learned counsel for the petitioners has submitted that description of *Pathargari* vis-a-vis the provisions enshrined in the Constitution of India would not amount to a crime under Section 121A, 121 and 124A of the Indian Penal Code and Sections 66A and 66F of the Information Technology Act. It has been stated that Facebook is an online discussion forum and a citizen of this country has the right to indulge in any discussion or express their opinion irrespective of the contents of the topic. Learned counsel for the petitioners submits that initiation of a discussion in which Facebook friends wholeheartedly participate cannot be termed as a seditious activity as the same would be against the spirit of the preamble of the Constitution of India which speaks of liberty of thought, expression, belief, faith and worship. Learned counsel submits that such discussion cannot be throttled since it merely confines itself to the practice of *Pathargari* and no further and by interpreting the same of being a seditious activity would tantamount to curtailing the 'Right of Freedom of Speech' of the persons concerned. Learned counsel has also referred to the cases of "*Shreya Singhal vs. Union of India"* reported in (2015) 5 SCC 1, "*Kedar Nath Singh vs. State of Bihar"*, reported in AIR 1962 SC 955, "*Javed Habib vs. State (NCT of Delhi)"* reported in (2007) 96 DRJ 693, "*N.V.S.J. Rama Rao vs. Broadcasting Corporation of*

India" reported in AIR 2013 AP 165, "*Sanskar Marathe vs. The State of Maharastra*" reported in 2015 Cri LJ 3561. Mr. Mardi while continuing further has referred to the object and purport of Section 124A of the Indian Penal Code which according to him was to suppress the voice of the people who would abuse the then British Government and several freedom fighters had suffered on account of the existence of such provisions. Referring to Section 73 of the Coroners and Justice Act, 2009 of the United Kingdom submission has been advanced that common law libel offences so far as England and Wales as well as Northern Ireland are concerned have been abolished. It has been submitted that the 'Freedom of Speech and Expression' has much wider scope in United Kingdom in the Human Rights Act, 1998. Mr. Prem Mardi, learned counsel for the petitioners further submits that submitting a post in Facebook would not amount to waging war against the Government for which he has referred to the case of "Nazir Khan and Others versus State of Delhi" reported in AIR 2003 SC 4427. He thus concludes that the fact and materials available on record would therefore suggest that the petitioners have been wrongly prosecuted against and therefore the entire criminal proceedings in connection with Khunti P.S. Case No. 124 of 2018 deserves to be quashed and set aside.

6. Opposing the arguments advanced by the learned counsel for the petitioners Mr. R.R. Mishra, learned G.P. II, submits that no interference is necessitated in the criminal proceedings in view of the fact that the investigation is at its nascent stage. He has questioned as to whether the petitioners can enjoy immunity under the law and that no First Information Report can be instituted for their seditious activities. Learned counsel further submits that the First Information Report cannot be an encyclopedia but on the face of it would be absolutely clear that the petitioners were

indeed involved in waging war against the country and thus are being rightly prosecuted for the offences as alleged. He has further submitted that *Pathargari* as per the tribal customs is very pious and the petitioners have distorted the cultural mandate flowing from time immemorial in the context of the tribal culture and they cannot be permitted to do so. It has further been submitted by the learned G.P. II that the 'Freedom of Speech' would not mean violation of the constitutional restrictions. He further submits that the Government is never opposed to the indigenous people and their culture rather the fact is otherwise in as much as the Government is wholeheartedly involved in promoting tribal culture and welfare. Learned counsel has referred to the judgment in the case of "*Prabhu Dayal versus State of Rajasthan*" reported in (2018) 8 SCC 127. He has also stated while referring to Section 482 Cr.P.C. that at this stage when there appears to be a prima facie case made out against the petitioners this Court would be loath to exercise its inherent powers under Section 482 Cr.P.C.

7. Mr. Mardi, countering the argument advanced by the learned G.P.II submits by reiterating that the petitioners cannot be subjected to harassment by a biased investigation and mere posting of message in Facebook would not invite prosecution for seditious activities.

8. The crux of the present case is as to whether there was a seditious act and or an act to wage war or abating waging of war against the Government of India on the part of the petitioners in the garb of practicing *Pathargari.*

9. To a non-tribal the term *Pathargari* would be alien but to a tribal it is a pious act which is practiced through times immemorial. Since the petitioners claim that mere practice of *Pathargari* would not invite any criminal offence it would be pertinent to refer to the true meaning and purport

of the term *Pathargari* as well as the allied and incidental rituals and practices of the tribals.

10. Land for a tribal is the genesis of multifarious social and cultural activities and it also denotes its attachment to the almighty as well as to his ancestors. The meaning of land to a tribal has been succinctly described in the book edited by 'Dev Nathan' and 'Virginius Xaxa' titled “Social Exclusion and Adverse Inclusion, Development and Deprivation of Adivasis in India” which is embodied in the following paragraphs:

> The meaning of land for the tribal people is derived from their many myths and legends, which describe the genesis of human beings and the creation, the human beings' allegiance to god, as well as their relationship with the spirits and other animate and inanimate beings. The creation story of the Uraons begins with the word Sat-Pati-raji, which means seven strips of land. The country of seven strips of land symbolizes the totality of land, that is, the whole world. Therefore, land according to the tribal people is more than the upper crust of soil on which grows the vegetation. It includes all that is under the earth and above the earth. Consequently, all minerals, forests, and water bodies along with the creatures living therein are part of the land. For the tribal people, land is, first of all, a source of livelihood. They grow crops and vegetables, collect fruits and roots as well as rear fowls and goats for food. Similarly they get the necessary wood, sand and stones for domestic use. Thus, satisfaction of the basic needs is the goal of production among the agrarian tribal people and not of the luxury goods as the modern society advocates.

Second, land is the basis of the tribal people's socio-cultural and religious identity. They get their social identity by belonging to their respective tribes in a special relationship with land and nature. Their surnames give them their individual and the clan or community identity. Similarly, the surnames show the tribal people's relatedness with the resources. There is no depletion of resources for profit and accumulation of wealth among the tribal people like in the industrial and the developed societies. The tribal people have a symbiotic relationship with these beings and resources. Their ethos is to harness and take care of them just as these nourish and sustain the human beings.

Third, land is also the basis of the tribal people's religious identity. They encounter their God in his creation like in the groves. Their guardian spirits are all over the earth- the Hills, the Rocks, the Forests, the Water bodies the fields and the village boundaries to mention a few. Their religious beliefs derived from myths and legends also take land and the resources to describe god, spirits, and human being's relationship with Him.

Fourth, land is the basis of the tribal people's socioeconomic and political systems. Community living is a value because land and its products are taken as the gifts of god to be shared by all. The communal ownership of land derives its significance from this sense of belonging to the community, the clan, and the tribe.

The authors thus conclude that land is the centre of the tribal people's cultural, religious, socioeconomic and political practices and it is land

which understood in a holistic sense, is at the root of the tribal identity.

11. The importance of land to a tribal having been highlighted hereinabove a glimpse of the traditional, social and cultural activities is to be given to understand their true meaning and their effect. In the foreword to the 'Encyclopaedia Mundarica' compiled by 'John Hoffmann Arthur Van Emelen' it has been mentioned as follows:

> **"**The Mundas are one of the oldest settlers in India, with their concentration in the Chotanagpur region of Bihar, Madhya Pradesh and Orissa.
>
> The Mundari language is a subject of great interest to both the ethnologist and the philologist, since it is the key to the understanding of the material and religious culture and social system of all the Munda tribes and it may be taken as the basis for the analysis and study of a number of tribal languages in India. It is interesting to note that this language contains such roots and vocables which appear to be cognates not only to those of Indo-Aryan languages including Sanskrit but also to the roots of such distant Indo-European languages as Greek, German, Flemish and English.
>
> The Encyclopaedia Mundarica records all the pure Mundari words and those borrowed from neighbouring languages and presents the etymology, different shades of meaning in usage, syntactical and grammatical peculiarities of those words and their relation to various cultural and religious concepts. It also contains lists and descriptions of flora, especially edible, medicinal and poisonous plants and their properties, with

> their Mundari names. Well written articles on the economic, social, moral and religious life of the Mundas is an another salient feature of this work.**"**

12. In Encyclopaedia Mundarica *bid-diri* means an erected stone slab, a memorial stone, a burial stone. Rough unhewn stone slabs of all manners of shape and dimension are met with, standing or lying in or near the largest villages as well as in the smallest hamlets lost away in forests. These slabs either cover the remains of the deceased (*sasan-diri*) or are erected to their memory (*biddiri*). Although these stones are themselves bare of every inscription, it is remarkable how the members of the village community retain the names of individuals who died generations ago and can point out the stones under which they are buried. Sometimes clusters of such stones are found in lonely spots far away from any human habitations. It further goes on to elaborate that nowadays *sasandiris* and *biddiris* are to be seen in a large number of Chota Nagpur villages in which for generations no Mundas have lived, and where Mundari is a totally unknown language, there they bear silent witness to the fact that it was the Mundas who "snatched those villages from the jaws of the tiger and the fang of the snake" which is a way of saying that the Mundas had cleared a piece of virgin forest.

13. A *bid* is to fix in the ground stone a post etc. in an upright and slanting position. *Diri* means a stone. '*Sasan diri*' means a stone slab brought to the s*asan* and ceremonially either laid over a grave of raised on small stones or at the corners in the part of the *sasan* where no corpses are buried.

14. There are other various types of *Pathargaris* which are practiced by the tribals. '*Akhra Diri*' is found in each Munda village and it is one of the three signs that speaks of the settlement of the Mundas in that place or village. '*Hora Diri*' is an age old tradition among Munda Tribes, when a

Munda settles in a place he erects a flat and high rectangular stone. On the stone the genealogical tree of the first settler and the name of his sons are engraved. It shows the ownership of the land and properties around him. He is the first settler hence he has the *khunkatidar* ownership of the land around him. '*Racha Diri*' is another form which relates to erecting a stone infront of the house in which the name of the person with his date of Birth and Death is engraved. The same is practiced in loving memory of the family members. Infront of the '*Hora Diri*', another stone is used and kept flat close to the stone erected which is known as '*Bo'o: Diri'*. This stone is the seat of honour for the deceased. '*Parha Diri*' is the by laws of the Government of India for the development of the Panchayti Rajya in favour of the tribals.

15. These are some of the instances of tribal practices. There are many more practices which are concerned with erection of stone.

16. In S.C. Roy's "The Mundas and their Country" in the chapter 'The Ethnography of the Mundas' description has been given about the stone slabs which is quoted as under:

> ***"****The village Sasan, too, adjoins the village-basti, and consists of a number of big stoneslabs lying flat on the ground, or propped up on small chips of stone at the corners, Under one or more of these stone-slabs, lie buried the bones of the deceased members of each family of Khuntkattidars of Bhuinhars of the village. The bones of a Munda, dying away from his Khuntkatti or Bhuinhari village, will, if possible be conveyed by his relatives, as a pious duty, to his ancestral village and there ceremonially buried under the family Sasan-diri or sepulchral stone-slabs in the Sasan of the Kili or sept. No outsiders, not even resident Mundaris of the village who do not belong to the original village-family, will be allowed to use the village-Sasan. And the Mundas very properly regard these sepulchral stones or Sasan-airis as the title-deeds of the Khuntkattidars and Bhuinhars of each village.****"***

In the said book the practice of the villagers with respect to the mortal remains of the ancestors have been dealt with and the same reads as follows:

> **"***Cremation of the dead seems to have been in vogue from very early times. Only the bones of the deceased used to be interred in the family-sasan or burial ground. And the village-sasan with the rude stone-slabs (sasan-diriko) that guard the mortal remains of the ancestors (haram-horoko) of the village-family, is to this day, a favourite meeting-ground of the once almighty Panch, and there even to this day, on occassions of public importance,-*
>
> *"Reveren'd sit,*
> *On Polished stones, the elders in a ring"*
>
> *Thus, these self-contained confederate republics, nestling among their spirit-haunted sal-groves, pursued the even tenour of their uneventful existence, knowing no enemy within or without save the wild beasts and reptiles of the surrounding forest.***"**

17. Learned counsel for the petitioners has accordingly submitted that *Pathargari* is a century old custom of the Munda tribes and there is nothing criminal in nature in practicing the tribal tradition.

18. Having dealt with the tribal practices and customs relating to various forms of *Pathargari* the allegation made in the First Information Report has once again been visited. The incident occurred on account of the security personnel attached with Shri Kariya Munda, Member of Parliament having been abducted on 26.06.2017 and pursuant to which a search was being made by the Police personnel at village Ghaghra in the District of Khunti. The Police personnel were kept confined by the villagers and some of the Police personnel were attacked by the villagers with stones, bows and arrows etc. which resulted in injuries. It was also alleged that the communal harmony was being disturbed on account of distorting the Constitution of India through social media and the innocent tribals were alleged to have been misled and

influenced by the accused persons. The First Information Report also contains the various Facebook posts involving the accused persons and which forms the basis for the allegation of incitement of seditious activities and violence as an aftermath on account of the provoking posts in Facebook. Some of the Facebook posts reveal that *Pathargari* has been used as a tool to invite discussions. A glaring example of the term *Pathargari* being misused is one of the posts in Facebook which reads as:

"वे कहते है,
मुझे तुम्हारा आधार कार्ड नही चाहिए,
मेरी पहचान पत्थरगरि है"

Another one reads as follows:

"देश के तमाम आदिवासी
हर कार्य संविधानिक करते चलो
मजबूर कर दो England, US
UNO को दखल देने के लिए
तभी तीसरी आजादी संभव है ।"

Another posts reads as follows:

"खुँटी सिर्फ किसी शीर्ष
कानूनविद से पैसा और ग्राम
सभा के अधिकारों की व्याख्यता
ओर उसका अनुपालना चाहता
है ....."

Another posts says:

"देश भर में करेंगे
बैंक आँफ ग्राम सभा का विस्तार"

19. It is not denied by the petitioners that they have not participated in the online discussions. From the posts some of which have been quoted above the same indicates a desired autonomy in the garb of *Pathargari* as one of the posts also includes extension of Bank of Gram Sabha in the entire country. *Pathargari* as per the tribal customs is a very pure and pious practice and various forms of *Pathargari* some of which has been elaborated hereinabove indicate the strong bonding of a tribal with nature and for various purposes stones are erected. Even the ownership of the land is denoted in terms of the erected stones apart from the various other

situations for the purpose of which a tribal practices *Pathargari.* It basically reflects a community bonding and the bonding of the tribal with nature. Extending the scope of *Pathargari* and establishing a separate administration on the garb of practicing *Pathargari* within an administration would be against the spirit of practicing *Pathargari.*

20. Mr. Prem Mardi, learned counsel for the petitioners has also submitted that initiation of a discussion in Facebook cannot be termed to be a seditious activity. He has also referred to the terms and conditions of service of Facebook which empowers a person to express himself and communicate about what matters to him. He has also stated that people will only built community on Facebook if they feel safe. The contents can be removed or blocked or account disabled if misuse of Facebook products and harmful conduct towards others are detected. Learned counsel for the petitioners submits that any post made by the petitioners is basically a discussion and/or expression of the user and such discussion cannot be termed to be a seditious activity. It has also been stated that the right of expression cannot be taken away by the Government on the pretext of using the discussion as a tool for seditious activities which does not seem to be the case as mere participation in a discussion on Facebook would in no way create a criminal offence. In such context reference has been made to the case of "*Shreya Singhal vs. Union of India"* reported in (2015) 5 SCC 1, "*Kedar Nath Singh vs. State of Bihar"*, reported in AIR 1962 SC 955, "*Javed Habib vs. State (NCT of Delhi)"* reported in (2007) 96 DRJ 693, "*N.V.S.J. Rama Rao vs. Broadcasting Corporation of India*" reported in AIR 2013 AP 165, and "*Sanskar Marathe vs. The State of Maharastra*" reported in 2015 Cri LJ 3561. Reference has also been made to the case of "Nazir Khan and Others versus State of Delhi" reported in AIR 2003 SC 4427.

21. Facebook is an online portal which is widely used. Although learned counsel for the petitioners has stressed much upon the terms of service of Facebook but at the same time it must be noted that a community was created in Facebook and a discussion was initiated with respect to *Pathargari*. Although learned counsel for the petitioners has tried to create an image that the discussions in Facebook by the accused and the posts are innocuous in nature and has no connection with the incident which led to institution of Khunti P.S. Case No. 124 of 2018 but the factual aspects reveal otherwise. The users who were taking part in the discussion had misused the same by submitting posts which related to autonomy and can be construed to be the primary reason for inciting violence upon the administration and the Police personnel. The intention of spreading of Gram Sabha Banks to other parts of the country, the efforts made at intervention of foreign powers and the United Nations for freedom are some of the blatant examples which indicate that Facebook was misused and messages were spread for inciting violence and creating disturbance in the community as a whole by trying to run an administration within an administration.

22. '**Sedition**' has been defined in "Black's Law Dictionary" (Ninth Edition) as:

> "**1.** An agreement, communication, or other preliminary activity aimed at inciting treason or some lesser commotion against public authority.
>
> **2.** Advocacy aimed at inciting or producing – and likely to incite or produce- imminent lawless action. ● At common law, sedition included defaming a member of the royal family or the government. The difference between *sedition* and *treason* is that the former is committed by preliminary steps, while the latter entails some

> overt act for carrying out the plan. But if the plan is merely for some small commotion, even accomplishing the plan does not amount to treason."

23. In 'Edward Jenks', *The Book of English Law* 136 (P.B. Fairest ed., 6th ed. 1967). '**Sedition**' has been defined as follows:

> **"**This, perhaps the very vaguest of all offences known to the Criminal Law, is defined as the speaking or writing of words calculated to excite disaffection against the Constitution as by law established, to procure the alteration of it by other than lawful means, or to incite any person to commit a crime to the disturbance of the peace, or to raise discontent or disaffection, or to promote ill-feeling between different classes of the community. A charge of sedition is, historically, one of the chief means by which Government, especially at the end of the eighteenth and the beginning of the nineteenth century, strove to put down hostile critics. It is evident that the vagueness of the charge is a danger to the liberty of the subject, especially if the Courts of Justice can be induced to take a view favour-able to the Government.**"**

24. '**Treason**' has been defined in 'Black's Law Dictionary' (Ninth Edition) as follows:

> **"**The offense of attempting to overthrow the government of the state to which one owes allegiance, either by making war against the state or by materially supporting its enemies**"**

25. **Insurrection** has been defined as **"**a violent revolt against an oppressive authority, usually, a government.**"** The object of recording the definition of the term treason is that

the same do not find place in the Indian Penal Code but can be equated with the term "Waging War".

26. Equipped with the definition of the terms which concerns the present application the contention of the learned counsel for the petitioners has once again been considered. Mr. Madri, in course of his argument had submitted that by instituting the First Information Report the freedom of speech and the voice of dissent has been sought to be curtailed by inviting offences under Section 121, 121A and 124A of the I.P.C. by the prosecution. Learned counsel has highlighted Article 19 (1) of the Constitution of India by stating that efforts have been made by the State machinery to curb the voice of dissatisfaction but by no stretch of imagination the offences as alleged have exceeded the exceptions as envisaged in Article 19(2) of the Constitution of India.

27. Since the petitioners have been charged for committing offences under Sections 121, 121A and 124A of the I.P.C. the same is reproduced hereinbelow:

> **Section-121. Waging or attempting to wage war or abetting waging of war against the Government of India.**
>
> Whoever wages war against the [Government of India], or attempts to wage such war, or abets the waging of such war, shall be punished with death, or [imprisonment for life], [and shall also be liable to fine].
>
> ***Illustration***
>
> (*a*) A joins an insurrection against the [Government of India]. A has committed the offence defined in this section.
>
> **Section-121A. Conspiracy to commit offences punishable by section 121.**
>
> *Whoever within or without [India] conspires to commit any of the offences punishable by section 121, or conspires to overawe, by means of criminal force or the show of criminal force, [the Central Government or any State Government, shall be*

*punished with [imprisonment for life], or with imprisonment of either description which may extend to ten years, [and shall also be liable to fine]***.**

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.]

Section-124A. Sedition.

*Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in [India], shall be punished with [imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine***.**

Explanation *1.—The expression "disaffection" includes disloyalty and all feelings of enmity***.**

Explanation *2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section***.**

Explanation *3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]*

Article 19 of the Constitution of India reads as follows:

Article 19. Protection of certain rights regarding freedom of speech, etc.-

(1) *All citizens shall have the right-*

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions [or co-operative societies]

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India;

(g) to practise any profession, or to carry on any occupation, trade or business.

(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 any offence]

(3) *Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order, or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.*

(4) *Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.*

(5) *Nothing in [sub-clauses (d), (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.*

(6) *Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, [nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,-*

(i) *the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or*

(ii) *the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.*

28. In the case of "*Kedar Nath Singh vs. State of Bihar*", reported in AIR 1962 SC 955, the controversy was as to whether Section 124A and Section 505 of the I.P.C. have become void in view of the provisions of Article 19(1)(a) of the Constitution of India. While arriving at a conclusion an elaborate definition of the term sedition has been recorded which reads as under:

> ***"16**. This statement of the law is derived mainly from the address to the Jury by Fitzerald, J., in the case of Reg v. Alexander Martin Sullivan, (1867-71) 11- Cox CC 44 at p. 45. In the course of his address to the Jury, the learned Judge observed as follows :*
>
> *"Sedition is a crime against society, nearly allied to that of treason and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the empire. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government the laws,or constitution of the realm, and generally all endeavours to promote public disorder."*

29. The question which was raised was answered in the affirmative which reads as follows:

> ***"25**. It has not been contended before us that if a speech or a writing excites people to violence or have the tendency to create public disorder, it would not come within the definition of 'sedition'. What has been contended is that a person who makes a very strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of Government or acts of public officials, might also come within the ambit of the penal section. But in our opinion, such words written or spoken would be outside the scope of the*

section. In this connection, it is pertinent to observe that the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with a view to punishing offences against the State, is undertaken. Such a legislation has, on the one hand fully to protect and guarantee the freedom of speech and expression, which is the sine qua non of a democratic form of Government that our Constitution has established. This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. The Court has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambit of a citizen's fundamental right guaranteed under Art. 19(1) (a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order. We have, therefore, to determine how far the Ss. 124A and 505 of the Indian Penal Code could be said to be within the justifiable limits of legislation. If it is held, in consonance with the views expressed by the Federal Court in the case of 1942 FCR 38 : (AIR 1942 FC 22), that the gist of the offence of 'sedition' is incitement to violence or the tendency or the intention to create public disorder by words spoken or written, which have the tendency or the effect of bringing the Government established by law into hatred or contempt or creating disaffection in the sense of disloyalty to the State, in other words bringing the law into line with the law of sedition in England, as was the intention of the legislators when they introduced S. 124A into the Indian Penal Code in 1870 as aforesaid, the law will be within the permissible limits laid down in cl. (2) of Art. 19 of the Constitution. If on the other hand we give a literal meaning to the words of the section, divorced from

all the antecedent background in which the law of sedition has grown, as laid down in the several decisions of the Judicial Committee of the Privy Council, it will be true to say that the section is not only within but also very much beyond the limits laid down in cl. (2) aforesaid.

26. *In view of the conflicting decisions of the Federal Court and of the Privy Council, referred to above, we have to determine whether and how far the provisions of Ss. 124A and 505 of the Indian Penal Code have to be struck down as unconstitutional. If we accept, the interpretation of the Federal Court as to the gist of criminality in an alleged crime of sedition, namely, incitement to disorder or tendency or likelihood of public disorder or reasonable apprehension thereof, the section may lie within the ambit of permissible legislative restrictions on the fundamental right of freedom of speech and expression. There can be no doubt that apart from the provisions of cl. (2) of Art. 19, Ss. 124A and 505 are clearly violative of Art. 19(1) (a) of the Constitution. But then we have to see how far the saving clause, namely, cl. 2. of Art. 19 protects the sections aforesaid. Now, as already pointed out, in terms of the amended cl. (2), quoted above, the expression "in the interest of. . . . . public order" are words of great amplitude and are much more comprehensive an the expression "for the maintenance of",, as observed by this Court in the case of Virendra v. State of Punjab, 1958 SCR 308 at p. 317 : ((S) AIR 1957 SC 896 at p. 899). Any law which is enacted in the interest of public order may be saved from the vice of constitutional invalidity. If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make them unconstitutional in view of Art. 19 (l) (a) read with cl. (2). It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities*

> *as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law an order that the law steps in to prevent such activities in the interest of public order, so construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation its purpose and the mischief it seeks to suppress vide (1) Bengal Immunity Co. Ltd. v State of Bihar, 1955-2 SCR 603 : ((S) AIR 1955 SC 661) and (2) R. M. D. Chamarbaugwala v. Union of India, 1957 SCR 930 : ((S) AIR 1957 SC 628). Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.***"***

30. Although learned counsel for the petitioners has stressed much upon the findings recorded in the aforesaid judgment at para 25 to the effect that figures words or writing directed to a very strong criticism of the measures of government or acts of public officials would be outside the scope of Section 124A, however the same could not be an act of offence under Section 124A of the I.P.C. so long as it does not incite people to violence against the government established by low or with the intention of creating public disorder. Virtually what has been much relied upon by the learned counsel for the petitioners in the case of "*Kedar Nath Singh vs. State of Bihar*" (supra) has been subject to exceptions as noted in the said paragraph.

31. In the case of "Arup Bhuyan v. State of Assam" reported in (2011) 3 SCC 377, it was held that mere membership of a banned organization will not incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resorting to violence. In the said Judgment the case of '*Brandenburg V. Ohio*' of the US Supreme Court reported in 395 US 444 (1969) has been considered and the same reads as under:

> ***"10.*** *In Brandenburg v. Ohio the US Supreme Court went further and held that mere "advocacy or teaching the duty, necessity, or propriety" of violence as a means of accomplishing political or industrial reform, or publishing or circulating or displaying any book or paper containing such advocacy, or justifying the commission of violent acts with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism, or to voluntarily assemble with a group formed "to teach or advocate the doctrines of criminal syndicalism" is not per se illegal. It will become illegal only if it incites to imminent lawless action. The statute under challenge was hence held to be unconstitutional being violative of the First and Fourteenth Amendments to the US Constitution.*
>
> It was concluded thus:
>
> ***"12.*** *We respectfully agree with the above decisions, and are of the opinion that they apply to India too, as our fundamental rights are similar to the Bill of Rights in the US Constitution. In our opinion, Section 3(5) cannot be read literally otherwise it will violate Articles 19 and 21 of the Constitution. It has to be read in the light of our observations made above. Hence, mere membership of a banned organisation will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence. Hence, the conviction of the appellant under Section 3(5) of TADA is also not sustainable."*

32. In the case of "*Javed Habib vs. State (NCT of Delhi)"* reported in (2007) 96 DRJ 693, the factual aspects reveal that the accused was the publisher and Editor of an

Urdu Weekly "Hazoom" in the year 1983 which had published an article under the title "Arrest Muslims Fighting for their rights-Secret Government Circular" which was authored by one 'Qurban Ali' and which was considered by the then government as offending and the accused was therefore tried for the offences under Sections 124A I.P.C. and Section 505 B I.P.C. The accused was convicted by the learned trial court and while allowing his appeal and setting aside the order of conviction and sentence it was held as follows:

> ***"5.*** *While considering offences under section 124A and 505B of IPC, the Court has to keep in mind the distinction between criticism of the government and the criticism by a leader of a political party. Where the leader of a political party becomes the head of the government, any criticism of the person and his policies as head of the political party or Government can not be viewed as sedition. The leader of the political party who appeals to the people to vote for him and his party, who reaches out to the people on the basis of his party is also open for criticism by the people for the very policies. Such criticism may not be in polite language and the tendency of the article may be to excite people not to vote for the party or to support such leaders or to project the leader as anti to a section of the society, such a criticism of the leader cannot be considered as offence under section 124A or under Section 505B IPC. Explanation 3 to Section 124A excludes such comments from preview of Section 124A, even it such comments amount to disapprobation of the actions of the Government.***"**

33. Learned counsel for the petitioners has also referred to the case of "*N.V.S.J. Rama Rao vs. Broadcasting Corporation of India*" reported in AIR 2013 AP 165. The factual aspects in the said case reveals about fiery speeches addressed by Sri Akbaruddin Qwaisi, MLA, at Nirmal in Adilabad on 24.12.2012 and thereafter, at Nizamabad, which was being broadcast repeatedly and discussed thereby hurting the sentiments of both the communities and were likely to lead to a flare up. On such apprehension the petitioner had sought for a declaration that the action of the

State in not taking steps to stop the broadcasting of the news items "Akbaruddin Qwaisi – Hate Speech at Adilabad and Nizamabad" as violative of Articles 21 and 25 of the Constitution of India. The writ application was dismissed since the petitioner therein was not able to establish that there was any threat to the law and order situation or had instigated commission of offences. The relevant part of the order reads thus:

> ***"10****. Coming to the facts of the case on hand, the press and the media have documented the speeches alleged to have been made by Sri Akbaruddin Owaisi, MLA, at Nirmal and Nizamabad, the contents of which are said to constitute offences punishable under the Indian Penal Code. It is also an admitted fact that the process of law has already been set in motion in this regard and cases have been registered against the MLA which will eventually take their own course as per law. The issue presently is whether any grounds are made out, in terms of the restrictions envisaged by Article 19(2) of the Constitution, to muzzle the freedom of the press and the media from airing programmes in connection with this issue.*
>
> ***11.*** *An adverse impact on public order or a propensity to incite commission of offences, constituting grounds for restriction of the freedom protected by Article 19(1)(a) of the Constitution, cannot be understood or applied in a vacuum. There must be a real threat perception in this regard before the State can invoke its powers under Article 19(2) of the Constitution. Though the incidents that we are concerned with are said to have taken place some time ago, the petitioner is not able to establish that they have created any discernible threat to the law and order situation or instigated commission of offences. But for a few sporadic demonstrations and utterances there has been no religious or communal strife or any threat to peace."*

34. The primary consideration which led to rejection of the writ application preferred in the case of "*N.V.S.J. Rama Rao vs. Broadcasting Corporation of India*" (supra) was absence of any discernible threat to the law and order situation or that it had instigated commission of offences

save and except a few sporadic demonstrations and utterances.

35. Learned counsel for the petitioners has sought to rely upon the said Judgment by stating that there has been no threat perception to the State. The said submission is devoid of merit as it has been stated time and again that it was on account of the petitioners and others which unleashed violence upon the Police personnel and the administration and it cannot be construed to be an isolated incident as a larger conspiracy from the Facebook posts do come to the fore and therefore the Judgment under reference is of no assistance to the petitioners.

36. In the case of "*Sanskar Marathe vs. The State of Maharastra*" reported in 2015 Cri LJ 3561, the gist of allegations revealed that on account of the cartoons drawn by the accused who claimed himself to be a political cartoonist and a social activist had led to spread of hatred and disrespect against the Government and therefore a First Information Report was instituted under Sections 124A of the I.P.C. While considering Section 124A of the I.P.C. it was held as follows:

> ***"15****.On a perusal of the aforesaid judgments, it is clear that the provisions of section 124A of IPC cannot be invoked to penalize criticism of the persons for the time being engaged in carrying on administration or strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comments, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. The section aims at rendering penal only such activities as would be intended, or have a*

tendency, to create disorder or disturbance of public peace by resort to violence.

16. *Cartoons or caricatures are visual representations, words or signs which are supposed to have an element of wit, humour or sarcasm. Having seen the seven cartoons in question drawn by the third respondent, it is difficult to find any element of wit or humour or sarcasm. The cartoons displayed at a meeting held on 27 November, 2011 in Mumbai, as a part of movement launched by Anna Hazare against corruption in India, were full of anger and disgust against corruption prevailing in the political system and had no element of wit or humour or sarcasm. But for that reason, the freedom of speech and expression available to the third respondent to express his indignation against corruption in the political system in strong terms or visual representations could not have been encroached upon when there is no allegation of incitement to violence or the tendency or the intention to create public disorder.***"**

37. The Hon'ble Supreme Court in the said Judgment went on to further direct the State Government to issue guidelines to all the Police personnel to be followed while invoking Section 124A of the I.P.C. being the pre-conditions which must be met before proceeding further.

38. Learned counsel has also stressed upon the law laid down by the Hon'ble Supreme Court in the case of "Nazir Khan and Others versus State of Delhi" reported in (2003) 8 SCC 461. The accused persons were convicted for the offences under Sections 364A, 121A, 122, 124A of the I.P.C. read with Section 120B of I.P.C. and Sections 3(4) of the TADA Act, 1987 and Section 14 of the Foreigners Act, 1946. Section 124A was considered and it was held as follows:

"37. *Section 124-A deals with "sedition". Sedition is a crime against society nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and laws of the country.*

> *The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. "Sedition" has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder.***"***

39. The expression waging war which is a spine of Section 121 and 121A have also been dealt with in the following manner:

> ***"34.*** *The expression "waging war" means and can only mean waging war in the manner usual in war. In other words, in order to support a conviction on such a charge it is not enough to show that the persons charged have contrived to obtain possession of an armoury and have, when called upon to surrender it, used the rifles and ammunition so obtained against the government troops. It must also be shown that the seizure of the armoury was part and parcel of a planned operation and that their intention in resisting the troops of the Government was to overwhelm and defeat these troops and then to go on and crush any further opposition with which they might meet until either the leaders of the movement succeeded in obtaining the possession of the machinery of government or until those in possession of it yielded to the demands of their leaders.*
>
> ***35.*** *The word "wages" has the same meaning as "levying" used in the English statute. In Lord George Gorden case27 Lord Mansfield said:*
>
> > *"There are two kinds of levying war: one against the person of the King; to imprison, to dethrone, or to kill him; or to make him change measures, or remove counsellors: the other, which is said to be levied against the majesty of the King, or, in other words, against him in his regal capacity; as when a multitude rises and assembles to attain by force and violence any object of a general public nature; that is levying war against the majesty of the King;*

and most reasonably so held, because it tends to dissolve all the bonds of society, to destroy property, and to overturn government; and by force or arms, to restrain the King from reigning according to law."

36. *An assembly armed and arrayed in a warlike manner for any treasonable purpose is bellum levatum, though not bellum percussum. Lifting and marching are sufficient overt acts without coming to a battle or action.*

"No amount of violence, however great, and with whatever circumstances of a warlike kind it may be attended, will make an attack by one subject on another high treason. On the other hand, any amount of violence, however insignificant, directed against the King will be high treason, and as soon as violence has any political objects, it is impossible to say that it is not directed against the King, in the sense of being armed opposition to the lawful exercise of his power. Where the object of a mob is not mere resistance to a District Magistrate but the total subversion of the British power and the establishment of the Khilafat Government, a person forming part of it and taking part in its actions is guilty of waging war. When a multitude rises and assembles to attain by force and violence any object of a general public nature, it amounts to levying war against the Government. It is not the number of the force, but the purpose and intention, that constitute the offence and distinguish it from riot or any other rising for a private purpose. The law knows no distinction between principal and accessory, and all who take part in the treasonable act incur the same guilt. In rebellion cases it frequently happens that few are let into the real design, yet all that join in it are guilty of the rebellion. A deliberate and organized attack upon the government forces would amount to waging a war if the object of the insurgents was by using armed force and violence to overcome the servants of the Government and thereby to prevent the general collection of the capitation tax." (See: Aung Hla case.)

"There is a diversity between levying of war and committing of a great riot, a rout, or an unlawful assembly. For example, as if three,

> *or four, or more, do rise to burn, or put down an inclosure in Dale, which the Lord of the Manor of Dale hath made there in the particular place; this or the like is a riot, a rout or an unlawful assembly, and no treason. But if they had risen of purpose to alter religion established within the realm, or laws, or to go from town to town generally, and to cast down inclosures, this is a levying of war (though there be great number of the conspirators) within the purview of this statute, because the pretence is public and general, and not private and particular."*
>
> *(See: Cokes' Inst. Ch. 1, 9.)*

40. Learned counsel for the petitioners has lastly referred to the case of "*Shreya Singhal versus Union of India*" reported in (2015) 5 SCC 1, It has been stated while referring to Article 19(1) (a) and 19(2) of the Constitution of India that liberty to thought and expression is a cardinal value that is of paramount significance under the Constitutional scheme as held in the Judgment under reference. Learned counsel thereafter has referred to the following paras:

> ***"13.*** *This leads us to a discussion of what is the content of the expression "freedom of speech and expression". There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, etc. Why it is important to have these three concepts in mind is because most of the arguments of both petitioners and respondents tended to veer around the expression "public order".*
>
> ***14.*** *It is at this point that a word needs to be said about the use of American judgments in the context of Article 19(1)(a). In virtually every significant judgment of this Court, reference has*

> *been made to judgments from across the Atlantic. Is it safe to do so?*
>
> ***15.*** *It is significant to notice first the differences between the US First Amendment and Article 19(1)(a) read with Article 19(2). The first important difference is the absoluteness of the US First Amendment—Congress shall make no law which abridges the freedom of speech. Second, whereas the US First Amendment speaks of freedom of speech and of the press, without any reference to "expression", Article 19(1)(a) speaks of freedom of speech and expression without any reference to "the press". Third, under the US Constitution, speech may be abridged, whereas under our Constitution, reasonable restrictions may be imposed. Fourth, under our Constitution such restrictions have to be in the interest of eight designated subject-matters—that is, any law seeking to impose a restriction on the freedom of speech can only pass muster if it is proximately related to any of the eight subject-matters set out in Article 19(2).***"**

41. Since the entire facets of the case has to be considered in the backdrop of the inherent powers of this Court under Section 482 Cr.P.C. it is to be seen as to in what circumstances a First Information Report can be quashed. In the case of *"Central Bureau of Investigation versus Ravi Shankar Srivastava, IAS and Another"* reported in (2006) 7 SCC 188, it was held as follows:

> ***"10.*** *As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the*

High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary and Raghubir Saran (Dr.) v. State of Bihar.] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See Dhanalakshmi v. R. Prasanna Kumar, State of Bihar v. P.P. Sharma, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, State of Kerala v. O.C. Kuttan, State of U.P. v. O.P. Sharma, Rashmi Kumar v. Mahesh Kumar Bhada, Satvinder Kaur v. State (Govt. of NCT of Delhi), Rajesh Bajaj v. State NCT of Delhi and in State of Karnataka v. M. Devendrappa.]”

42. Mr. R.R. Mishra, learned G.P.II, has also stated while referring to the case of *"Prabhu Dayal versus State of Rajasthan"* reported in (2018) 8 SCC 127, that the First Information Report need not contain an exhaustive account of the incident and it is not an encyclopedia of the case.

43. Having recorded the submissions advanced by the learned counsel for the respective parties as well as the various pronouncements on the subject this Court now proceeds to consider the validity or otherwise of the arguments advance by the counsels.

44. It is seen from the various definitions as well as the interpretations that there is a thin line of demarcation between "**sedition**" and "**waging of war**" against the country. Whether an act of an individual or collective is seditious and/or waging war has to be designed from the factual aspects of each case. As the learned G.P. II had argued the First Information Report cannot be an encyclopedia bringing within its fold the entire aspects of the case. The First Information Report discloses how the violence was triggered on account of dissemination of views through Facebook by the accused by misconstruing and misinterpreting the term *pathargari*. The convulsion on account of such posts and its percolation to the common people led to mass frenzy which cannot be termed to be within the confines of freedom of speech and expression as well as liberty of thought as sought to be put forward by the learned counsel for the petitioners while putting much stress on Article 19(1) (a) of the Constitution of India but comes within the exceptions of Article 19(2) of the Constitution of India. It is no doubt true that offences under Sections 121, 121A of the I.P.C. and Section 124A of the I.P.C. will not be attracted if an act propagates one's political theories or ideologues and attempts for its imposition but once he crosses the barriers of non reactive violence and attempts to excite, incite or attract

disaffection towards the Government established by law by words, spoken or written or by visible representation or by signs he becomes liable for committing an offence under Section 124A of the I.P.C. The act of the petitioners would also not come within explanation 2 and explanation 3 of Section 124A simply on account of the fact that the disapprobation of the measures of the Government was made by inciting violence, hatred, contempt and disaffection. Prima facie therefore the petitioners are liable for being prosecuted under Section 124A of the I.P.C. since manifestation of their desires are apparent. The initial or preliminary activity aimed at inciting treason will be construed to be a seditious activity but once the attempts produces or gets executed into a lawless action the same comes within Sections 121 and 121A of the I.P.C. What constitutes an act of waging war has recently been construed by the Hon'ble Supreme Court in the case of *"Mohd. Jamiludin Nasir versus State of West Bengal"* reported in (2014) 7 SCC 443 wherein the general principles relating to the same has been laid down; some of which reads as under:

> ***"160.5.*** *The court must be cautious in adopting an approach which has the effect of bringing within the fold of Section 121 all acts of lawlessness and violent acts resulting in destruction of public property, etc.*
>
> ***160.6.*** *The moment it is found that the object sought to be attained is of a great public nature or has a political hue the offensive violent act targeted against the armed force and public officials should not be branded as acts of "waging war".*
>
> ***160.7.*** *The expression "waging war" should not be stretched too far to hold that all acts of disrupting public order and peace irrespective of their magnitude and repercussions could be reckoned as acts of "waging war" against the Government.*
>
> ***160.8.*** *A balanced and realistic approach is called in construing the expression "waging war" irrespective of how it was viewed in the long long past.*

> ***160.9.*** *An organised movement attended with violence and attacks against the public officials and armed forces while agitating for the repeal of an unpopular law or for preventing burdensome taxes were viewed as acts of treason in the form of "waging war".*
>
> ***160.10.*** *Neither the number engaged nor the force employed nor the species of weapon with which they may be armed is really material to prove the offence of waging war.***"**

45. A note of caution has been put to the effect that all act of lawlessness and violence would not attract Section 121 and the expression "waging war" should not be stretched too far to include all acts of disrupting public order and peace. In fact as far back as in 1946 in the case of *"Maganlal Radhakishan vs. Emperor"* reported in AIR 1946 Nagpur 173, the following characteristic were dealt with.

> ***"****From these authorities the following principles emerge: (I) No specific number of persons is necessary to constitute an offence under S. 121, Penal code, (ii) The number concerned and the manner in which they are equipped or armed is not material, (iii) The true criterion is quo animo did the gathering assemble? (iv) The object of the gathering must be to attain by force and violence an object of a general public nature, thereby striking directly against the king's authority, (v) There is no distinction between principal and accessory and all who take part in the unlawful act incur the same guilt.***"**

46. What can be crystallized from the aforesaid Judgments is the necessity of a cautious approach to the allegations, dissection of the intention and the fall out of such intention. It is to be borne in mind that this Court is considering as to whether prima facie offences are made out or not against the petitioners. The Facebook posts have already been referred to and the intention is quite visible regarding an act of sedition on the part of the petitioners. Spreading of Gram Sabha Banks through out the country, raising issue before the United Nations for independence are

some of the justifiable grounds for proceeding against the petitioners. Such seditious activity led to incitement of violence and attack on the Police party. The incident cannot be said to be in isolation as the factual aspects reveals. On such context therefore a case under Sections 121 and 121A of the I.P.C. is prima facie made out against the petitioners.

47. In view of the discussions made hereinabove, I do not find any reason to entertain this application, which is hereby dismissed.

(R. Mukhopadhyay, J.)

Alok