

via Video-conferencing

\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P. (CRL.) No.895/2020

VINOD DUA

..... Petitioner

Through: Mr. Vikas Singh, Senior Advocate
with Mr. Varun Singh, Advocate.

Versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Piyush Singhal, Advocate for
GNCTD.

Mr. Anil Soni, Advocate with Mr.
Ajay Digpaul, Advocate and Mr.
Satya Ranjan Swain, Advocate for
complainant.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

%

10.06.2020

At the outset, Mr. Ajay Digpaul, Mr. Anil Soni and Mr. Satya Ranjan Swain, Advocates have appeared on behalf of the complainant/ Mr. Naveen Kumar, upon whose complaint the First Information Report (FIR) that is subject matter of the present proceedings was registered.

2. Upon oral prayer made by counsel on behalf of the complainant; and with no objection from Mr. Vikas Singh, learned senior counsel appearing for the petitioner, the complainant Mr. Naveen Kumar is impleaded as party-respondent No.2 in the present proceedings.

3. Amended memo of parties be filed before the next date.

Crl. M.A. No.7411/2020 (exemption)

4. Exemption is granted, subject to just exceptions and subject to the petitioner completing all requirements of filing typed/clear/original/certified copies of annexures and documents, attested affidavits and court fees within 10 days of physical reopening of courts.

5. Application stands disposed of.

W.P.(CRL) No. 895/2020

6. The petitioner, who is a known journalist and television anchor, has filed the present petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) praying for quashing of FIR No.74/2020 dated 04.06.2020 registered under sections 290/505/505(2) of the Indian Penal Code, 1860 (IPC) at PS : Crime Branch, New Delhi. The petitioner has further prayed for an investigation into the registration of the FIR by respondent No.1/State, as also for compensation for violation of the petitioner's fundamental rights.

7. As recorded above, while the petitioner had impleaded only the State/Government of NCT of Delhi as respondent in the matter, the complainant has also now been impleaded as party-respondent No.2 in the petition.

8. Issue notice.

9. Mr. Piyush Singhal, Advocate for respondent No.1/State and Mr. Anil Soni, Advocate for respondent No. 2/complainant accept notice; and seek time to file status report/counter-affidavits. Let status report/counter-affidavits be filed within 3 weeks; rejoinder thereto, if

any, be filed within 2 weeks thereafter.

10. List on 23.07.2020.

Crl. M.A. No. 7410/2020 (for stay of FIR)

11. By way of this application, the petitioner prays for stay of investigation and further proceedings against him in the subject FIR.

12. Issue notice.

13. Mr. Piyush Singhal, Advocate for respondent No.1/State and Mr. Anil Soni, Advocate for respondent No. 2/complainant accept notice; and seek time to file status report/reply. Let status report/reply be filed within 3 weeks; rejoinder thereto, if any, be filed within 2 weeks thereafter.

14. Briefly, the genesis of the matter is a webcast made by the petitioner on “The Vinod Dua Show” on HW News Network on the YouTube platform. From what appears on record and as per the averments contained in the petition and submissions made by Mr. Vikas Singh learned Senior Counsel for the petitioner, the webcast was made on 11.03.2020 and ran for approximately 12 minutes, comprising two parts, each addressing a different current affairs issue. About 08 minutes of the webcast was in relation to the politics of government formation in the State of Madhya Pradesh in the context of some recent happenings. According to Mr. Singh, as per the allegations contained in the FIR, this part of the webcast is not subject matter of the FIR. The second part, of about 04 minutes was in relation to the riots that happened in the North-East part of Delhi in February 2020; and the complainant’s grievance appears to be with what was said during the webcast in relation to the riots ; and that was subject matter of the complaint made and the FIR registered

against the petitioner.

15. The essence of the allegations contained in the FIR are extracted below :

Apart thereof, in the said show Mr. Vinod Dua had also casted manipulated and fabricated reporting whereby the genuine information is manipulated by him to deceive. In the said show, certain new content is shown which is 100% false, which is designed to deceive and do harm. 5. Mr. Vinod Dua had made a false reporting in the aforesaid show and also used unparliamentarily language. In the said show Mr. Vinod Dua had made accusation about present Politic (degradation of value "buying & purchase of politician" and specifixcally accused BJP and its Leader for that. Mr. Vinod Dua has also alleged and called that Vyapam Scam (The Vyapam scam was an alleged entrance examination, admission and recruitment scam that was unearthed in the Indian state of Madhya Pradesh in 2013)is a scam of BJP ERA MR. Dua also stated that the Prime Minister is toothless and has no potential to deal with the issues of country and he is only involved in Politics of political Crisis (Sarakar Giarana). The said allegations are absolutely incorrect and far from any truth and the same time the allegations are vaseless. Apart thereof Mr. Vinod Dua had conducted Mis-reporting over the Delhi Riot and stated that the Central Government had done nothing to stop the violence and had put his word in the mouth of Mr. Kapil Mishra (BJP Leader). Succinctly speaking Mr. Vinod Dua "reported tha BJP was solely responsible for Delhi Riot and Prime Minister & Home Minister is directly responsible for that. He has make fun of the Prime Minister by using derogatory word as a scaremonger. 6. The said report is

(Extract from the record)

Contrary to record and thus absolutely false & misleading. The journalist Mr. Vinod Dua has blatantly lied or has misinformed his viewers about the series of events. There are also a series of instances where bizarre and unfounded allegations have been made against the government, police and Political Leaders. The reporting's full of false content misleading context, imposter & manipulated contents and the link of the video is share herewith <https://www.youtube.com/watch?v=6auFmOCBopM>. The contents thereof be read part and parcel of this complaint. 7. The act of Mr. Vinod Dua as stated aforesaid is not only in violation of strict guidelines of Ministry of Information & Broadcasting & Press Council of India for which his accreditation is liable to be revoked, however, apart thereof his act constitute several offences punishable under various provisions of Indian Penal Code. Mr. Vinod Dua is ultimately become threat to Security, Integrity of Nation as such false reporting is ultimately has tremendous tendency of provoking breach of peace, promoting enmity, ill-will & hatred between classes & community, mischief apart from creating public nuisance. 8. The act of Mr. Vinod Dua constitute the offence of public nuisance, mischief, printing & engraving matters known to be defamatory, intentional insult with intent to provoke breach of the peace, statements conducting to public mischief etc. and other cognizable offence. 9. It is stated that because of Mr. Vinod Dua and like him, it is difficult to distinguish false News from Legitimate Reports. It is stated that

(Extract from the record)

16. The complaint, as extracted in the FIR, has been filed by respondent No. 2 Shri Naveen Kumar, who is a spokesperson of a political party. The FIR further records as under:

police and Political leaders and... com/watch?v=6auFm0CBopM. The relevant portion of the video starts on the 8.30 minute of the said video. The relevant extracts of the transcript of the Video uploaded are that: "दूसरा शर्मनाक विषय है दिल्ली में हिंसा हुई, 65 दिन तक शांतिपूर्वक प्रदर्शन चलते रहे Citizenship Amendment Act के खिलाफ, NPR के खिलाफ और जो National Register of Citizen NRC उसके खिलाफ, कुछ नहीं हुआ, पूरे देश में अभी भी चल रहे हैं, Home Ministry के मुताबिक 291 जगह ऐसी हैं जहाँ शाहीन बाग जैसे protest चल रहे हैं। अब इसको हिंसा से कैसे जोड़ा जाये, इसको communal फिर्कापरस्थी का कैसे दिया जाये ये काम बखूबी कर दिखाया नार्थ-ईस्ट दिल्ली में हिंसा करके और इसको दंगों का नाम दिया गया, जब दंगे होते हैं तो सीधा-साधा ये कहा गया कि कपड़ों से पहचान हो जाती है कि दंगाई कौन है, इशारा साफ कि खासकर मुसलमानों को target किया गया इसमें, तीन दिन दंगे होते रहे ना कहीं प्रधान सेवक दिखे ना कहीं गृह मंत्री दिखे हमारे अमित शाह। गृह मंत्री ने आज संसद में कहा कि वो review meetings ले रहे थे और वो Trump event चल रहे थे तो Trump event भी उन्होंने मिस किये 'Trump event' मिस किये उन्होंने काफी सारे और वो review meeting ले रहे थे। National Security Advisor जिसका काम पूरे देश की सुरक्षा है अंदरूनी भी और बाहरी भी Security Advisor है वो प्रधान मंत्री को सलाह देते हैं, खुद उनको एक SHO की तरह गलियों में घूमना पड़ा क्यों, क्योंकि गृह मंत्री ने अपना काम नहीं किया। उधर मीनाक्षी लेखी एक MP हैं वो कह रही हैं 'क्या ये गृह मंत्री का काम है कि वो पुलिस स्टेशन में जाकर बैठें।' बिल्कुल है, जब सड़क पर उतरना होता है जब दंगे हो रहे हों पुराने नेताओं के सबक सीखिए, दंगे माफ कीजिये दंगे नहीं हिंसा हो रही हो पुराने नेताओं से सबक सीखिए। हमारे पुराने नेता जिसमें जवाहर लाल नेहरू शामिल हैं वो खुद कूट पड़ते थे भीड़ में, लेकिन यहाँ प्रधान सेवक परमहंस बन जाते हैं, गृह मंत्री गायब रहते हैं, तीन दिन तक नार्थ-ईस्ट दिल्ली हिंसा होती रही करोड़ों की property बर्बाद हुई लोग मारे गए और फिर ये ऊपर से सीना ठोक कर

(Extract from the record)

कह रहे हैं कि 36 घंटे में काबू पा लिया गया। हुए क्यों दंगे पहली बात, कपिल मिश्रा को ऐसे बोलने क्यों दिया गया, DCP साथ में खड़ा हुआ है, अनुराग ठाकुर को 'देश के गद्दारों को गोली मारो सालों को' उनको ऐसा नारा लगाने क्यों दिया गया, अगर लगाया भी उनके खिलाफ कार्यवाही क्यों नहीं पूरी हुई, प्रवेश वर्मा के खिलाफ कार्यवाही क्यों नहीं हुई। उन पर कोई कार्यवाही नहीं हुई बल्कि पीठ थप-थपाने की 36 घंटे में ये जो हिंसा थी इसको रोक दी गई और दिल्ली पुलिस ने बेहतरीन काम किया। दिल्ली पुलिस एक fact sheet जारी करे कि कितने मुस्लिमान नौजवानों को अभी तक गिरफ्तार किया गया, कहा-कहां से उठाया गया है किन हालात में उठाया गया है सड़क चलते उठाया गया एक मंदिर की हिफाजत कर रहा था मुसलमान, उसकी जो रिपोर्ट है उसकी कनपटी पर पिस्तौल रखकर उसको रात को उठाया गया है। ये पुलिस की कामयाबी है क्या इतना मतलब पुलिस का जो स्वाभिमान होता है एक शान होती है एक अपनी एक reputation होती होती है वह पुराने police commissioners में हमने देखी थी, आलोक वर्मा जैसे निखिल कुमार जैसे या कुछ और भी उससे पहले भी अब नहीं, उस पर पीठ ठोकना कि हमने 36 घंटे में काबू पा लिया यह शर्म की बात है लिहाजा, इसलिए मैं ये कह रहा हूँ अधीर रंजन चौधरी जी कह रहे थे उन्होंने तो तुलना कर दी प्रधान सेवक की मोसोलीन से इटली का डिकटेटर था लोग हिटलर से भी करते उसमें जब रोम जल रहा था न्यूरो अपनी वो वायलन बजा रहा था, यहाँ दिल्ली जल रही थी नॉर्थ ईस्ट दिल्ली के इलाकों में आग लगी हुई थी यहाँ प्रधानमंत्री परमहंस की मुद्रा में सबसे ऊपर उठ कर बैठे हुए थे कि मेरा इससे कुछ लेना-देना नहीं है गृहमंत्री गायब थे, आज के दिन दो विषय ऐसे हैं निहायती शर्मनाक है हमारी डेमोक्रेसी के लिए हमारे देश के लिए इतिहास में आज का दिन इसलिए दर्ज किया जाएगा कि सिर्फ दो विषय हैवी रहे कोरोना वायरस नहीं रहा रहा हावी बेरोजगारी नहीं रही हावी अर्थव्यवस्था नहीं रही सामाजिक ताना-बाना जो फाड़ा जा रहा है चीरा जा रहा है जो दरार डाली जा रही है वह नहीं थी यह दो विषय थे, नमस्कार।" From the contents of the complaint and above mentioned uploaded

(Extract from the record)

17. Based on the complaint, the FIR records that the petitioner is spreading rumours and misinformation about the sensitive issue of the Delhi riots; and that his comments/remarks in the webcast contain communal overtones, which during the current COVID crisis, is causing public disaffection, which shall cause hatred and ill-will between different communities as under :

वह नहीं थी यह दो विषय थे, नमस्कार ।" From the contents of the complaint and above mentioned uploaded video by Sh. Vinod Dua is deliberately spreading rumors and misinformation regarding the sensitive issue of Delhi Riots. The comments/remarks in the video are in communal overtone. During the current crisis of COVID-19 & the present sensitive situation, such rumors & misinformation through Social Media is causing public disaffection which shall cause hatred and ill-will between the different communities. Therefore, above mentioned Vinod Dua by the aforesaid act has committed an offence under Section 290/505/505(2) IPC. Accordingly, a case under aforesaid sections of law may please be

(Extract from the record)

18. As is evident from the record, while the date of commission of the alleged offence is 11.03.2020, the date and time of receipt of information for registration of FIR is indicated as 04.06.2020 as 22:48 hours.

19. Of the offences mentioned in the FIR, the offence under section 290 IPC *i.e.* punishment for public nuisance in cases not otherwise provided for, is punishable with fine of upto Rs. 200/- and is non-cognizable and bailable ; the offence under section 505 IPC *i.e.* statements conducing to public mischief, of which section 505(1)(c) appears to be what is alleged, is punishable with imprisonment for upto 03 years or fine or both, and is non-cognizable and (yet) non-bailable; and the offence under section 505(2) IPC *i.e.* statements creating or promoting enmity, hatred or ill-will between classes, is punishable with imprisonment for upto 03 years or fine or both, and is cognizable and non-bailable.

20. Before proceeding further, it may be beneficial at this point to extract the relevant offences that have been alleged against the petitioner, which read as under:-

Section 290:

"290. Punishment for public nuisance in cases not otherwise provided for.—Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which

may extend to two hundred rupees.”

Section 505(1) :

“505. Statements conducing to public mischief.—(1) Whoever makes, publishes or circulates any statement, rumour or report,—
(a) with intent to cause, or which is likely to cause, any officer; soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or
(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or
(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,
shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

Section 505(2):

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

The exception to section 505 is of significance, and reads as under :

“Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid.”

21. Accordingly, the belief on the part of a person making a statement that such statement is true, good faith and lack of intent, carve-out an exception to offences under section 505 IPC.

22. Mr. Vikas Singh, learned senior counsel for the petitioner submits:-

(a) That first and foremost, the only material furnished on the basis of which the FIR has been registered is a recording of the webcast dated 11.03.2020, of which the allegedly offending part starts at 08:30 minutes of the recording;

(b) That while it has been alleged that the petitioner has said that high governmental functionaries, as mentioned in the webcast, were responsible for and instigated the riots that occurred in North-East Delhi, a bare perusal of the transcript of the recording, which has been filed along with the petition, shows that no such comment or allegation was at all made. All that was said in the webcast is that the functionaries did not visit the riot-affected areas and were pre-occupied with the on-going State visit of a foreign dignitary. Attention in this regard is drawn to the transcript of the webcast at 09:17 minutes and 11:55 minutes of the timeline;

(c) That what is stated in the webcast is that no action has been taken and no FIR has been registered against three *other* persons, who are supposed to have instigated rioting by making inflammatory speeches;

(d) That the narration in regard to these three persons is borne-out by what was recorded by a Division Bench of this

court in order dated 26.02.2020 made in W.P.(Crl.) No.565/2020, wherein, after playing recordings of the abovementioned speeches in open court, the Division Bench had in fact observed that the speeches *ex-facie* appear to be 'hate speech' under section 153A(1)(a) and (b) IPC. It is submitted that since the narration during the webcast on 11.03.2020 was based upon what was recorded in order dated 26.02.2020, such narration was therefore made in good faith without any intent within the mischief of section 505, and believing the statement made to be true on the basis of what was recorded in the High Court order;

(e) That accordingly, the allegations made in the complaint, as recorded in the FIR, do not reflect what was actually said in the webcast, as contained in the CD submitted as evidence;

(f) That there is no explanation for the inordinate delay in making the complaint and registration of the FIR, which was made more than 70 days after the webcast;

(g) That the complaint has not been made by some member of the common public who may be aggrieved but by a person who is admittedly a spokesperson of a ruling political party at the Centre;

(h) That in the circumstances, as per law laid down by the Supreme Court as cited hereinafter, the FIR deserves to be quashed and all proceedings arising therefrom should be set aside.

23. Citing judicial precedents in the petitioner's favour, Mr. Vikas Singh relies on the following judgments of the Supreme Court:-

- (a) ***State of Haryana & Ors. vs. Bhajan Lal & Ors.*** : 1992 Supp. (1) SCC 335 (para 102), to submit that where *prima-facie* no offence is made-out or the allegations do not disclose commission of a cognizable offence or the FIR appears to have been registered *mala-fide*, the same deserves to be quashed;
- (b) ***Lalita Kumari vs. Govt. of U.P. & Ors.*** : (2014) 2 SCC 1 (para 120.6), to urge that no FIR should have been registered without at least first conducting a preliminary inquiry;
- (c) ***Imtiyaz Ahmad vs. State of U.P. & Ors.***: (2012) 2 SCC 688 (para 55), to argue that this court has unquestionable authority to order stay of investigation pursuant to lodging of an FIR.

24. Mr. Singh further submits that although by order dated 09.06.2020 made in case No. 622/2020 being an anticipatory bail application, the petitioner has been granted interim protection by the learned Additional Sessions Judge, nevertheless even continuance of investigation would amount to serious harassment of the petitioner who would be repeatedly called to the police station. Senior counsel further contends that the entire case rests on the contents of the CD and no further investigation is in any case required.

25. Mr. Piyush Singhal, learned counsel appearing on behalf of respondent No.1/State submits that investigation in the matter is at a nascent stage; that notice has only been issued to YouTube; and that the petitioner has so far not even been called for investigation.

26. Appearing on behalf of respondent No. 2/complainant, Mr. Anil Soni, Mr. Ajay Digpaul and Mr. Satya Ranjan Swain, learned counsel

have argued against grant of any interim relief to the petitioner on the following basis:

- (a) That the ingredients of section 505(2) IPC are made-out on the basis of the allegations in the complaint and in the FIR;
- (b) That a narration made in the offending webcast to the effect that Delhi Police should issue a fact-sheet indicating as to how many people from the minority community were picked-up and arrested; from where; in what condition and under what threat, amounts to propagating alarming news with intent to create or promote enmity, hatred or ill-will between classes, which is an offence punishable under section 505(2), and which is both cognizable and non-bailable;
- (c) That insofar as delay in filing of the complaint is concerned, it is explained that the offending program is still available on YouTube and has been circulated on social media; and although not stated in the complaint, the complainant only got to see the program on 02.06.2020 whereupon the complaint was made. It is further argued that what is stated in the offending narration is merely the petitioner's 'opinion' and not based on any 'fact', and that only rumour has been fostered to create enmity;
- (d) It is further argued that there is no legal basis or precedent for staying investigation or proceedings in an FIR.

27. Now, at this stage, while taking a *prima facie* view of the matter, this court is guided by the following decisions of the Supreme Court, which give the judicial perspective with which to view a matter such as this.

28. In ***Lalita Kumari vs. Govt. of U.P. & Ors.***¹ the Supreme Court has said this:

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

** * * * **

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

** * * * **

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

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

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

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

(Emphasis supplied)

29. In ***State of Karnataka vs. L. Muniswamy***² the Supreme Court observed that :

“7. The second limb of Mr Mookerjee's argument is that in any event the High Court could not take upon itself the task

¹ (2014) 2 SCC 1

² (1977) 2 SCC 699

of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept. Section 227 of the Code of Criminal Procedure, 2 of 1974, provides that:

** * * * **

“Section 482 of the New Code, which corresponds to Section 561-A of the Code of 1898, provides that:

“Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or other wise to secure the ends of justice.”

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these

observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

(Emphasis supplied)

30. In the leading case on the power to quash proceedings under section 482 CrPC, in ***State of Haryana & Ors vs. Bhajan Lal & Ors***³, the Supreme Court has laid down 7 categories of cases in which it would be legally justified to quash an FIR, the relevant ones of which are :

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

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

³ 1992 Supp (1) SCC 335

(2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

(3) * * * * *

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6) * * * * *

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*”

(Emphasis supplied)

31. Then again, in ***State of Karnataka vs. M. Devendrappa***⁴, the Supreme Court has guided the High Courts to exercise their inherent power thus :

“6. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed

⁴ (2002) 3 SCC 89

before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified

to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

* * * * *

“8. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in

State of Haryana vs. Bhajan Lal. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows: (SCC pp. 378-79, para 102)

* * * * *

(Emphasis supplied)

32. In ***Imtiyaz Ahmad vs. State of U.P. & Ors.***⁵ the Supreme Court has dealt with a case of stay of investigation and has said this :

“55. Certain directions are given to the High Courts for better maintenance of the rule of law and better administration of justice:

While analysing the data in aggregated form, this Court cannot overlook the most important factor in the administration of justice. The authority of the High Court to order stay of investigation pursuant to lodging of FIR, or trial in deserving cases is unquestionable. But this Court is of the view that the exercise of this authority carries with it the responsibility to expeditiously dispose of the case. The power to grant stay of investigation and trial is a very extraordinary power given to the High Courts and the same power is to be exercised sparingly only to prevent an abuse of the process and to promote the ends of justice. It is therefore clear that:

(i) Such an extraordinary power has to be exercised with due caution and circumspection.

(ii) Once such a power is exercised, the High Court should not lose sight of the case where it has exercised its extraordinary power of staying investigation and trial.

(iii) The High Court should make it a point of finally disposing of such proceedings as early as possible but

⁵ (2012) 2 SCC 688

preferably within six months from the date the stay order is issued.”

(Emphasis supplied)

33. Now in the above juridical backdrop, it is note-worthy that the offence comprised in section 505(2) IPC is *in pari materia* with that comprised in section 153A IPC, inasmuch as it refers to acts and omissions that are intended to create enmity, hatred or ill-will between different religions or communities. While considering section 153A and also referring to section 505(2) IPC in ***Manzar Sayeed Khan vs. State of Maharashtra & Anr.***⁶ the Supreme Court has opined that it is the gravamen of the offence of creating enmity between different communities, that there should be reference to a second community ; and the offence cannot proceed on the basis of an allegation where only one community has been mentioned :

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

⁶ (2007) 5 SCC 1

book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section 153-A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning.”

* * * * *

“18. Again in Bilal Ahmed Kaloo v. State of A.P. it is held that the common feature in both the sections viz. Sections 153-A and 505(2), being promotion of feeling of enmity, hatred or ill will “between different” religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Further, it was observed that merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.”

(Emphasis supplied)

34. On a *prima-facie* view, in the present case, the following aspects emerge from the record :

- (i) That there is substantial unexplained delay in filing of the complaint and registration of the FIR inasmuch as the date of the alleged offence is 11.03.2020 whereas the complaint came to be made only on 03.06.2020 leading to registration of FIR on 04.06.2020, which is a delay of almost 3 months. Such delay would have required a preliminary enquiry as per the mandate of *Lalita Kumari* (cf. para 120.6 of judgment, *supra*) ;

- (ii) That even after registration of the FIR on 04.06.2020, as per the statement made by counsel for respondent No.1, no substantial investigation has been carried-out except for issuance of notice to YouTube ; and the petitioner has not been called to join investigation. He says, in fact that he learned of the registration of the FIR through social media and from the public domain;
- (iii) That what the complainant alleges was said in the webcast, is not what appears in the transcript of the webcast ; and to that extent no cognizable offence is disclosed on the basis of the material cited by the complainant warranting registration of an FIR as per *Lalita Kumari* (cf. para 120.2 of the judgment, supra), *Muniswamy* (cf. para 7 of the judgment, supra), *Bhajan Lal* (cf. para 102(2) of the judgment, supra) and *Devendrappa* (cf. para 8 of judgment, supra) ;
- (iv) That naming the three persons in the webcast and questioning the police inaction against those persons, is based on what was recorded in the Division Bench order dated 26.02.2020 in W.P.(Crl.) No.565/2020; and therefore appears to fall within the exception to section 505, at least on first blush;
- (v) That there is no allegation that any adverse consequences, in terms of enmity, hatred or ill-will, muchless any violence or breach of peace, occurred as a consequence of the webcast;
- (vi) That the ingredients and gravamen of the offence under section 505(2) do not seem to be made-out as required per *Manzar Sayeed Khan* (cf. para 18 of the judgment, supra) ;

(vii) That in view of the above factual picture, it *prima-facie* appears that the registration of the FIR requires to be examined on the touchstone of the law as laid down in the above-referred judicial precedents, since the steps taken so far by the State do not appear to be in consonance with such law and do not inspire much confidence.

35. Although, as submitted at the bar, the petitioner has already been granted interim protection in anticipatory bail proceedings by the learned Additional Sessions Judge, this court is of the *prima-facie* view that further investigation or proceedings pursuant to the FIR are likely to cause unwarranted and unjustified harassment to the petitioner.

36. Keeping in view the law as laid-down by the Supreme Court and the guidance and direction given in the above-cited precedents, without forming an opinion on the merits of this matter, this court is persuaded to think that the filing of the complaint and registration of the FIR deserve to be considered and deliberated further, *before* allowing investigation to proceed against the petitioner. Accordingly, further investigation in the matter arising from the subject FIR is stayed, till the next date of hearing.

37. List on 23.07.2020.

ANUP JAIRAM BHAMBHANI, J.

JUNE 10, 2020

Ne