

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION LD-VC NO.37 / 2020

CRIMINAL WRIT PETITION (ST.) NO. OF 2020

Arnab Ranjan Goswami ... Petitioner
Vs.
State of Maharashtra and others ... Respondents

Mr. Harish Salve, Senior Advocate along with Dr. Milind Sathe, Senior Advocate with Malvika Trivedi, Saket Shukla, Mrinal Ojha, Debarshi Dutta, Vasanth Rajasekaran, Ishaan Chhaya, Rajat Pradhan, Sanjeev Sambasivan, Madhavi Doshi, Reshma Ravi i/b. Phoenix Legal for the Petitioner.

Mr. Kapil Sibal, Senior Advocate along with Raja Thakare, Rahul Chitnis, Avadhut Chimalkar, Akash Kavade, Siddharth Jagushte, i/b. Deepak Thakare for Respondent Nos.1, 5 and 6 - State of Maharashtra.

Shri Anil Singh, ASG with Shri H.S. Venegavkar, D.P. Singh for Respondent No.2 - Union of India.

Mr. Ashok Mundargi along with Prachi T. for Respondent No.3.

Mr. Rizwan Merchant for Respondent No.4.

**CORAM : UJJAL BHUYAN &
RIYAZ I. CHAGLA, JJ.**

Reserved on : JUNE 12, 2020

Pronounced on : JUNE 30, 2020

ORDER:

Heard Shri. Harish Salve and Dr. Milind Sathe, learned senior counsel for the petitioner; Mr. Kapil Sibal, learned senior counsel representing the State of Maharashtra for respondent Nos.1, 5 and 6; Mr. Anil Singh, learned Additional Solicitor General of India for respondent No.2 i.e., Union of India; Mr. Ashok Mundargi, learned counsel for respondent No.3; and Mr. Rizwan Merchant, learned counsel for respondent No.4.

2. By filing this petition under Articles 226 / 227 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973, petitioner seeks the following reliefs:-

1. Declare sections 153A, 153B(1) and 295A of the Indian Penal Code, 1860 as unconstitutional being violative of Articles 14, 19(1)(a) and 21 of the Constitution of India;
2. Quash FIR No.164 of 2020 registered at N. M. Joshi Marg Police Station, Mumbai (earlier FIR No.238 of 2020 registered at Sadar Police Station, Nagpur, since transferred to N. M. Joshi Marg Police Station, Mumbai where it has been re-numbered as above), registered under various provisions of the Indian Penal Code, 1860;
3. Quash FIR No.137 of 2020 registered at Pydhonie Police Station, Mumbai under various provisions of the Indian Penal Code, 1860;
4. Issue appropriate writ, order or direction to respondent No.1 and all authorities working under respondent No.1 restraining them from registering any First Information Report (FIR) against the petitioner in relation to the broadcast aired on Republic Bharat on 14th and 15th April, 2020 in relation to the Bandra incident which is already covered by FIR No.137 of 2020 registered at Pydhonie Police Station.

2.1. An interim prayer has been made to stay all further proceedings in FIR No.164 of 2020 registered at N. M. Joshi Marg Police Station, Mumbai and FIR No.137 of 2020 registered at Pydhonie Police Station, Mumbai as well as for a direction to respondent Nos.1, 5 and 6 not to take any coercive action / steps against the petitioner in connection with the above two FIRs.

3. Petitioner is a journalist. He is the Editor-in-chief of an English television news channel called Republic TV and a Hindi television news channel called Republic Bharat or R. Bharat. Petitioner hosts various news shows on both the channels. He is also the Managing Director of ARG Outlier Media Pvt. Ltd., the

company which owns and operates both the channels.

4. On 16.04.2020 there was a broadcast on Republic TV regarding an incident which took place on 16.04.2020 at Gadchinchale village of Palghar district in the State of Maharashtra. In this unfortunate incident three persons including two *Sadhus* were brutally lynched and killed by a mob allegedly in the presence of police and forest guard personnel. This incident was widely reported in the print and electronic media including by the news channels of the petitioner. On 21.04.2020 petitioner hosted a debate on R. Bharat regarding the said incident. According to the petitioner, a video recording of the said incident is in the public domain. In the debate, petitioner questioned the alleged tardy investigation into the incident and also the alleged attempt by authorities in the State Government to suppress the gravity of the said incident despite the incident happening in the presence of police personnel. Further, petitioner questioned the response or rather the silence of the Indian National Congress and its President Smt. Sonia Gandhi on the said incident and wondered aloud as to whether it was because the victims were Hindu *Sadhus*.

5. Following the above broadcast, a large number of First Information Reports (FIRs) came to be lodged against the petitioner in various states of the country by activists and supporters of Indian National Congress. According to the petitioner all the FIRs were filed within a short span of time based on identical cause of action and appeared to be part of a well co-ordinated, widespread, vindictive and malicious campaign launched by the Indian National Congress (for short 'the Congress' hereinafter) and by its activists to harass and punish the petitioner for making statements and allegations against the Congress and its members, particularly its present President for their response or rather silence on the above incident. All these FIRs alleged commission of offence by the petitioner under various provisions of the Indian Penal Code, 1860 ('IPC' for short), such as, sections 153, 153A, 153B, 295A, 298, 500, 504, 505, 506, 511 and 120B.

According to the petitioner, a campaign for his arrest was launched in the social media.

6. The first of the FIRs was lodged before Sadar Police Station, Nagpur by respondent No.3 who is a Cabinet Minister of Maharashtra and a prominent leader of the Congress party. This FIR was lodged on 22.04.2020 and was registered as FIR No.238 of 2020.

7. Petitioner has stated that on 23.04.2020 between 12:30 a.m. and 1:00 a.m. while he and his wife were returning home by car from his news studio at Worli, Mumbai, they were attacked by two persons on a motorcycle. When the assailants were confronted by the security personnel of the petitioner, the two of them had alleged to have disclosed their identity as members of the Congress. In this connection petitioner lodged FIR before the N. M. Joshi Marg Police Station on 23.04.2020 which has been registered as FIR No.148 of 2020 under sections 341, 504 and 34 IPC.

8. Petitioner filed Writ Petition (Criminal) No.130 of 2020 before the Supreme Court under Article 32 of the Constitution of India for quashing all complaints and FIRs lodged against the petitioner in multiple states and union territories; for a writ / direction that no cognizance should be taken of any complaint or FIR on the basis of the cause of action covered by the complaints and FIRs leading to institution of the writ proceeding before the Supreme Court; and for a direction to the Central Government to provide adequate security to the petitioner, his family and his colleagues at Republic TV and R. Bharat.

9. The writ petition was entertained on 24.04.2020.

10. Both, petitioner and senior counsel Mr. Sibal appearing for the State of Maharashtra informed the Supreme Court that they had no objection to the transfer

of the FIR lodged at Sadar Police Station, Nagpur to N. M. Joshi Marg Police Station, Mumbai where petitioner's FIR was being investigated. Consequently, Supreme Court passed interim order on 24.04.2020 transferring FIR No.238 of 2020 lodged at Sadar Police Station, Nagpur to N. M. Joshi Marg Police Station, Mumbai with the clarification that petitioner should co-operate in the investigation. While protecting the petitioner against coercive steps arising out of and in relation to the said FIR for a period of three weeks, liberty was granted to the petitioner to apply for anticipatory bail under section 438 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short hereinafter) and to pursue such other remedies as are available in law to be considered on its own merit by the competent court. While allowing investigation to proceed in FIR No.238 of 2020 since transferred, Supreme Court stayed further proceedings arising out of the complaints and FIRs, numbering 14, other than FIR No.238 of 2020 since transferred. Further, Commissioner of Police, Mumbai was directed to consider providing additional security to the petitioner based on threat perception, if such a request was made by the petitioner.

11. Petitioner has stated that he had co-operated with the investigation and appeared before the police at N. M. Joshi Marg Police Station where FIR No.238 of 2020 was transferred from Sadar Police Station, Nagpur and renumbered as FIR No.164 of 2020 though the investigation appeared to be a sham.

12. On 02.05.2020 respondent No.4 lodged first information before the Pydhonie Police Station, Mumbai regarding a broadcast on R. Bharat on 29.04.2020 in which petitioner had allegedly made statements with reference to a place of worship to the effect that people belonging to Muslim community were responsible for the spread of coronavirus. On the basis of the above first information, FIR No.137 of 2020 was registered under sections 153, 153A, 295A, 500, 505(1), 505(2), 511 and 120B IPC. As per contents of the FIR it has been alleged that petitioner by entering into criminal conspiracy in conducting the

programme on R. Bharat TV channel connecting Jama Masjid, Bandra with the crowd gathered near Bandra railway station made objectionable statements and hurt the religious feelings of the Muslim community. It is alleged that this created religious hatred between the communities thereby increasing enmity between them. It is further alleged that this has been done with the object of defaming the Muslim community.

13. Petitioner moved the Supreme Court under Article 32 of the Constitution of India for quashing the said FIR. The said writ petition was registered as Writ Petition (Criminal) Diary No.11189 of 2020. This writ petition was tagged along with Writ Petition (Criminal) No.130 of 2020.

14. Petitioner also filed interim applications in Writ Petition (Criminal) No.130 of 2020. In I.A.No.48585 of 2020 petitioner sought for stay of investigation in connection with FIR No.238 of 2020 since re-numbered as FIR No.164 of 2020 before N. M. Joshi Marg Police Station and in the alternative to transfer the investigation to the Central Bureau of Investigation (CBI) requiring the CBI to submit report to the Supreme Court from time to time. Other prayers like permission to the petitioner to join the investigation by video conferencing and providing security to him and his family were also made.

15. In I.A.No.48586 of 2020 petitioner sought for amendment of the writ petition by making additional prayers including a declaration that FIR No.164 of 2020 and consequent investigation by the State were illegal being violative of the fundamental rights of the petitioner under Articles 19 and 21 of the Constitution, further to restrain the State from continuing with the investigation pursuant to FIR No.164 of 2020.

16. In addition, petitioner filed two other interlocutory applications covering the same reliefs as sought for in the two interlocutory applications alluded to

hereinabove. That apart, one interlocutory application was filed by the State of Maharashtra alleging that petitioner was obstructing the due course of investigation in FIR No.164 of 2020.

17. Both the writ petitions were heard together along with the interlocutory applications and were disposed of vide the judgment and order dated 19.05.2020. Without elaboration on the issues deliberated upon by the Supreme Court at this stage, suffice it to say that the following directions and orders were passed by the Supreme Court:-

1. Interim order dated 24.04.2020 by which FIR No.238 of 2020 was transferred from Sadar Police Station, Nagpur to N. M. Joshi Marg Police Station in Mumbai was confirmed. On transfer, the FIR has been re-numbered as FIR No.164 of 2020 which shall be investigated by the N. M. Joshi Marg Police Station in Mumbai;
2. Prayer for transfer of investigation into FIR No.164 of 2020 (earlier FIR No.238 of 2020) to the CBI was rejected;
3. Prayer for quashing FIR No.164 of 2020 (earlier FIR No.238 of 2020) under Article 32 of the Constitution of India was declined;
4. Petitioner would be at liberty to pursue his remedies as are available in law under the Cr.P.C. before the competent forum which shall be considered on its own merit;
5. In view of the law laid down by the Supreme Court in *Subramanian Swamy Vs. Union of India*, **(2016) 7 SCC 221**, it was clarified that FIR No.164 of 2020 does not cover the offence of criminal defamation under section 499 IPC which offence will not form the subject matter of the investigation;
6. All the other FIRs / complaints relating to the broadcast in respect of the Palghar incident, numbering 14, were quashed;
7. Quashing of the said FIRs and complaints would not amount to any expression of opinion by the Supreme Court on the merit of the FIR

which is under investigation by the N. M. Joshi Marg Police Station in Mumbai;

8. No other FIR or complaint shall be initiated or pursued in any other forum in respect of the same cause of action emanating from the broadcast on 21.04.2020 by the petitioner on R. Bharat. Any other FIRs or complaints in respect of the same cause of action emanating from the said broadcast on 21.04.2020 have also been held to be not maintainable;
9. Writ Petition (Criminal) Diary No.11189 of 2020 was dismissed with liberty to the petitioner to pursue such remedies as are available in accordance with law;
10. Protection granted to the petitioner on 24.04.2020 against coercive steps was extended for a period of three weeks to enable the petitioner to pursue the remedies available in law;
11. Commissioner of Police, Mumbai was directed to consider the request of the petitioner for providing security based on the threat perception;
12. Finally it was clarified that nothing contained in the said judgment should be construed as an expression of opinion on the merit of the allegations contained in the FIRs.

18. Thereafter the present petition has been filed before this Court seeking the reliefs as indicated above.

19. Dr. Milind Sathe, learned senior counsel for the petitioner submits that petitioner has questioned two FIRs in this proceeding as being an abuse of the process of law and driven by ill motive towards the petitioner to cause harassment and intimidation to him due to political animosity. The first FIR i.e., FIR No.238 of 2020 was initially registered in the Sadar Police Station, Nagpur and subsequently transferred to N. M. Joshi Marg Police Station, Mumbai on orders of the Supreme Court where it has been re-numbered as FIR No.164 of 2020. This

FIR pertains to a broadcast on R. Bharat on 21.04.2020 which was anchored by the petitioner. It related to an incident of lynching of two *Sadhus* by a mob in front of police personnel on 16.04.2020 at a place in Palghar district (referred to hereinafter as “the Palghar incident”). The second FIR being FIR No.137 of 2020 was registered in the Pydhonie Police Station, Mumbai pertained to an incident of a huge crowd gathering in front of the Jama Masjid, Bandra in violation of lockdown norms on 14.04.2020.

19.1. Learned counsel has taken us to the FIRs as well as transcripts of the broadcast which have been placed on record. Regarding the broadcast relating to the Palghar incident he submits that the informant is a senior leader of the Congress party and a serving Minister in the present Government in Maharashtra. His contention is that if the telecast is taken or viewed as a whole, by no stretch of imagination can it be said to be communal or having communal overtones inciting or provoking animosity or hatred towards another community or between communities. Petitioner had only questioned the response or rather the silence of the Congress party and its President to the killing of two Hindu *Sadhus*. His submission is that after the Supreme Court had clarified that the offence of criminal defamation cannot be investigated in FIR No.164 of 2020, what remains is sections 153, 153A, 153B and 295A IPC. Bereft of the statements made against the Congress and its President, no offence of provoking or promoting disharmony or feelings of enmity, hatred or ill-will between different religious communities can be said to have been committed by the petitioner. Besides, question of causing the offence of rioting or making imputations prejudicial to national integration or acting deliberately with malicious intention of outraging the religious feelings of any class of citizens of India does not arise. Petitioner having been named as the sole accused, there can also be no question of any criminal conspiracy.

19.2. His further submission is that these sections may require a fresh look in the context of journalistic freedom based on the anvil of right to free speech under

Article 19(1)(a) of the Constitution of India *vis-a-vis* the reasonable restrictions under Article 19(2).

19.3. Dr. Sathe submits that after the Supreme Court granted interim protection to the petitioner on 24.04.2020, as an after thought, the Pydhonie FIR was lodged on 02.05.2020 wherein it was deliberately mentioned that the broadcast on the Bandra incident was aired in R. Bharat on 29.04.2020 when there was no such broadcast on that day. The broadcast relating to the Bandra incident was on 14.04.2020 and 15.04.2020. This delayed lodging of FIR coupled with deliberate wrong mentioning of the date of telecast as 29.04.2020 when the broadcast was actually on 14th and 15th April, 2020 clearly reveals the *mala fide* intention of the first informant to teach the petitioner a lesson. Even otherwise also this FIR does not make out any offence as alleged.

19.4. Dr. Sathe has referred to the decision of the Supreme Court in *State of Haryana Vs. Bhajan Lal*, **1992 Supp.(1) SCC 335**, more particularly to paragraph 102 of the report and submits that the present case would be covered by clauses (1), (2) and (7) thereof. He therefore submits that present is a fit case for quashing the two FIRs being an abuse of the process of law in the exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India as well as in exercise of its inherent powers under section 482 Cr.P.C. and also to read down the above sections of IPC to preserve and uphold journalistic freedom which is part of the fundamental right to free speech under Article 19(1) (a) of the Constitution.

20. Summing up the submissions on behalf of the petitioner, Mr. Salve, learned senior counsel submits that there is no dispute to the wide powers of the investigating authority to investigate an offence; there is no dispute that an investigation cannot be carried out as per whims and desires of the accused; there is no dispute to the proposition that the FIR need not disclose each and every

detail of the incident leading to commission of an offence; there is also no dispute to the proposition that courts should not interfere with the investigation by the police. These are all admitted. The question is not of availability of such power but the exercise of that power. If it is a case of misuse or abuse of the powers of the police, certainly the High Court has ample powers to nip in the bud such scurrilous and vexatious prosecution.

20.1. Reverting to the facts of the present case he submits that the transcripts of the telecast would have to be read as a whole; in other words, in its entirety. There should be no cherry picking of sentences from here and there and then say that this sentence is communal and therefore an offence of provoking or inciting communal disharmony is committed. His contention is that the totality of the circumstances has to be seen and thereafter decide as to whether action taken by the police is an abuse of the legal process and suffers from *mala fide*. This process involves balancing of rights between freedom of an individual and powers of the investigating authority. Adverting to the contents of the two broadcast leading to registration of the two FIRs, he submits that no offence as alleged has been made out and therefore petitioner should not be subjected to such vexatious and malicious prosecution. He admits that the language used by the petitioner in the two broadcast might have been sharp; a view may even be taken that it was in bad taste or defamatory. But does not make out a case of committing offence under sections 153, 153A, 153B and 295A IPC. Holding so would be an abuse as the remedy lies in an action for defamation. The sequence of events narrated by the petitioner clearly reveals a pattern. It is unmistakable that filing of the FIRs is vitiated by *mala fide*. When *mala fide* is alleged State has to file affidavit.

21. Representing the State of Maharashtra, Mr. Sibal, learned senior counsel, has referred to the judgment of the Supreme Court dated 19.05.2020 in the case of the petitioner himself. He submits that he had himself submitted before the Supreme Court that except the first FIR which is now FIR No.164 of 2020 before

N. M. Joshi Marg Police Station, Mumbai, all the other FIRs being on the same cause of action may be quashed. He had also agreed to transfer of the first FIR from Nagpur to Mumbai so that no inconvenience is caused to the petitioner during the pandemic. Petitioner had agreed to this and it was on his consent and request that the FIR was transferred from Nagpur to Mumbai. That being so, petitioner cannot now question investigation of the said FIR by the Mumbai Police. Referring to the Supreme Court judgment, he submits that petitioner is seeking to pre-empt an investigation by the Mumbai police which is untenable. An accused cannot decide or dictate as to who should be the investigating authority or the mode / manner of investigation.

21.1. Referring to the conduct of the petitioner, Mr. Sibal submits that petitioner is an accused and cannot claim to be above the law. Despite protection against coercive action being granted to him by the Supreme Court for limited duration to enable the petitioner to apply for anticipatory bail under section 438 Cr.P.C., petitioner has not filed any application for anticipatory bail; instead he is indirectly seeking the same relief by filing the present petition seeking to invoke section 482 Cr.P.C. Section 482 Cr.P.C. cannot be a substitute and cannot be invoked where remedy of section 438 Cr.P.C. is available.

21.2. Mr. Sibal has read out various portions of the transcripts relating to the two broadcast forming the subject matter of the two FIRs and submits that a reading thereof would *prima facie* show commission of offence of trying to provoke or incite ill-will or hatred or animosity towards the Muslim community. He further submits that attack on Smt. Sonia Gandhi is not on account of her being President of the Congress party but because of her being a Christian and that is why petitioner had accused her of seeking approval from Italy which is pre-dominantly a Christian country. He has also requested the Court to see the video footage of the two telecast because the offence under the above sections, such as, sections 153A and 153B speak of commission of offence not only by words but by signs or by

visible representation. His submission is that the manner in which the petitioner anchored the two telecast i.e., his body language and gestures clearly indicated the communal intention behind the utterances of the petitioner. The offensiveness and viciousness of the broadcast can be gauged by numerous tweets in the social media following the broadcast which are outrightly communal and dangerous. Considering the reach of the two channels, it can have serious consequences.

21.3. All these would require investigation including whether any criminal conspiracy was hatched to commit such offence. This can only be unearthed through an in-depth investigation. He submits that outcome of the investigation cannot be pre-judged at this stage. It may even result in filing of closure report.

21.4. Alluding to the challenge to the constitutional validity of section 295A IPC as being violative of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution, he submits that Supreme Court in *Ramji Lal Modi Vs. State of UP*, **AIR 1957 SC 620** had declared the said section to be constitutionally valid falling well within the protection of clause (2) of Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 19(1)(a).

21.5. In so far section 153A IPC is concerned, he has referred to a Special Bench decision of this Court in *Gopal Vinayak Godse Vs. Union of India*, **AIR 1971 Bom. 56** which dealt with challenge to an order of forfeiture of a book. He submits that whether a charge under section 153A IPC could be sustained or not in the context of the offending passages of the book, the book as a whole has to be read to see whether it promotes feelings of enmity or hatred between Hindus and Muslims in India. What is important is the intention of the author or the publisher of the book. It would be enough to show that the language of the writing is of a nature calculated to promote feelings of enmity or hatred. He submits that this would be equally applicable to a broadcast. But the fact remains that in the present

case even the stage of framing charge has not been reached; the investigation being at a preliminary stage. Mr. Sibal has also referred to the decision of the Supreme Court in *Manzar Sayeed Khan Vs. State of Maharashtra*, **(2007) 5 SCC 1**, to buttress his argument that the gist of the offence under section 153A IPC is the intention to promote feelings of enmity or hatred in different classes of people. Intention to cause disorder or incite people to violence is the *sine qua non* of the offence under section 153A IPC.

21.6. Further contention of Mr. Sibal is that the defence that may be available to an accused during trial and which may lead to his acquittal cannot be grounds for quashing the FIR at the threshold. For this proposition he places reliance on *Kamal Shivaji Pokarnekhar Vs. State of Maharashtra*, **(2019) 14 SCC 350**.

21.7. On the allegation of *mala fide*, he submits that no affidavit is required to be filed by the State. When an information is lodged at the police station and an offence is registered, then *mala fides* of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person; allegations of *mala fides* against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. In support of this proposition Mr. Sibal has placed reliance on the decision of the Supreme Court in *State of Karnataka Vs. M. Devendrappa*, **(2002) 3 SCC 89**.

21.8. Responding to the submission that the FIRs do not disclose any criminal conspiracy, he has referred to the decision of the Supreme Court in *Kirender Sarkar Vs. State of Assam*, **(2009) 12 SCC 342** and submits that FIR is not supposed to be an encyclopaedia of the entire events. It is not even a substantive piece of evidence. All that is required is that material facts must be disclosed in the FIR.

21.9. Regarding exercise of jurisdiction under section 482 Cr.P.C., Mr. Sibal has pressed into service a recent decision of the Supreme Court in *Ahmed Ali Qureshi Vs. State of UP*, **2020 SCC Online SC 107** to contend that the said power has to be exercised sparingly and in the rarest of the rare cases. He further submits that the court should exercise judicial restraint while examining prayer for quashing of FIR under section 482 Cr.P.C. and in such a proceeding no interim relief should be granted, the appropriate remedy being an application for anticipatory bail under section 438 Cr.P.C. In this connection he has placed reliance on the decision of the Supreme Court in *State of Telangana Vs. Habib Abdullah Jeelani*, **(2017) 2 SCC 779**.

21.10. Before concluding his submissions Mr. Sibal has drawn the attention of the Court to a decision of the Supreme Court in *Pravasi Bhalai Sangathan Vs. Union of India*, **(2014) 11 SCC 477**, wherein the Supreme Court expressed serious concern over what is called hate speech. In this case also Supreme Court held that exercise of judicial power is subject to principles of judicial restraint.

21.11. Contending that no case for interference is made out, he submits that the petition may be dismissed.

22. Supporting the submissions of Mr. Sibal, Mr. Ashok Mundargi, learned counsel for respondent No.3 has again referred to the decision in **Bhajan Lal** (*supra*) and submits that no case for quashing of FIR has been made out. Referring to paragraphs 103 and 104 of the said decision he submits that court would not be justified in embarking upon an enquiry as to the reliability or genuineness of the allegations made in the FIR. If any false and vexatious allegation is made against any person thereby injuring his reputation and causing harassment, the remedy would be to prosecute such person under sections 182 or 211 or 500 IPC besides suing for damages. Finally, he submits that the entire video clip covering the two broadcast should be seen to have a proper perspective.

23. Mr. Rizwan Merchant, learned counsel for respondent No.4 has referred to FIR No.137 of 2020 registered at Pydhonie Police Station in which his client is the first informant. Responding to the submissions of Dr. Sathe that there was no broadcast either in Republic TV or in R. Bharat on 29.04.2020 regarding the Bandra incident, he submits that this is a matter of investigation. Investigating officer will find out whether there was any such broadcast on 29.04.2020 or the broadcast was on 14th and 15th April, 2020 and thereafter carry forward the investigation because whatever may be the date of the broadcast the contents thereof are highly objectionable clearly intending to provoke or incite enmity, ill-will or hatred amongst religious communities. Like Mr. Mundargi, he has also requested the court to view the entire clip of the broadcast and thereafter make an assessment of the prayer of the petitioner.

23.1. An additional submission has been made by Mr. Merchant regarding clubbing of different causes of action in one proceeding. Referring to Chapter XVII Rule 1 of the Bombay High Court Rules, he submits that two FIRs cannot be challenged in a single proceeding.

24. Mr. Anil Singh, learned Additional Solicitor General of India appearing for the Union of India submits that since *vires* of sections 153A, 153B(1) and 295A IPC have been challenged or at least petitioner seeks reading down of the said provisions, notice may be issued to the office of the Attorney General. In so far the other prayers of the petitioner are concerned, Union of India has no role to play.

25. In his reply submissions, Mr. Salve submits that the decision of the Supreme Court in **Manzar Sayeed Khan** (*supra*) relied upon by Mr. Sibal in fact supports the case of the petitioner. It is the intention which is relevant for commission of an offence under section 153A IPC and not the reaction. In this connection he has referred to paragraphs 16 and 17 of the said judgment. That

apart, to attract section 153A the statement or gestures of the petitioner should involve at least two groups or communities. Merely inciting the feeling of one community or group as alleged without any reference to any other community or group would not attract section 153A IPC. Referring to the two broadcast and their related materials, he submits that it is quite evident that the focus of attack of the petitioner was on the Congress party and its President. It is a political attack by the petitioner on the Congress party and cannot be distorted to give it a communal colour.

25.1. Before closing his submissions Mr. Salve submits that there are many issues in this country which are extremely sensitive. If the approach of respondent No.1 is adopted and the yardstick applied, it would mean that such issues can never be discussed or debated in the public domain. He therefore submits that since the two FIRs do not make out commission of any offence by the petitioner besides being patently vitiated by *mala fide*, those may be quashed.

26. Though Mr. Salve submitted that Dr. Sathe would reply to the submission of Mr. Merchant that two FIRs cannot be challenged in one proceeding as per Bombay High Court Rules, Court indicated that it was not necessary as Court was considering the matter on substantive issues.

27. Submissions made by learned counsel for the parties have been duly considered. We have also carefully gone through the relevant materials on record and the judgments cited at the bar.

28. At the outset we may advert to the judgment of the Supreme Court in the case of the petitioner dated 19.05.2020. The core issue before the Supreme Court and which was the basic concern of the Supreme Court was the lodging of multiple FIRs and complaints against the petitioner in various states arising from the same cause of action i.e., the programme which was telecast on R. Bharat on

21.04.2020 relating to the Palghar incident. At the time of passing of the interim order by the Supreme Court on 24.04.2020, one of the principles that was considered was the need to ensure that the criminal process did not assume the character of a vexatious exercise by the institution of multifarious complaints founded on the same cause of action in multiple states.

28.1. At the time of hearing, Supreme Court had drawn the attention of learned counsel for the respondents to the fact that the FIRs which were filed in various states by persons professing allegiance to the Congress party *prima facie* appeared to be reproductions of the same language and content. Responding to this, Mr. Sibal submitted that the Court might as well quash all other FIRs and allow investigation into the FIR which was transferred to the N. M. Joshi Marg Police Station to proceed in accordance with law.

28.2. Supreme Court noted in paragraph 28 of the judgment that the fundamental basis on which its jurisdiction under Article 32 was invoked was the filing of multiple FIRs and complaints against the petitioner in various states and union territories relating to the same cause of action. Thereafter Supreme Court dealt with the issue concerning multiple criminal proceedings on the same cause of action. Supreme Court referred to its decision in *T. T. Anthony Vs. State of Kerala*, **(2001) 6 SCC 181**, where it was held that there can be no second FIR where the information concerns the same cognizable offence alleged in the first FIR. It was held that barring situations in which a counter case is filed, a fresh investigation or a second FIR on the basis of the same or connected cognizable offence would constitute an abuse of the statutory power of investigation and may be a fit case for exercise of power either under section 482 Cr.P.C. or Articles 226 / 227 of the Constitution.

28.3. Supreme Court referred to its subsequent decisions on the above issue and applied the same to the case of the petitioner who faced multiple FIRs / complaints

in diverse jurisdictions arising out of one and the same incident i.e., broadcast by the petitioner on 21.04.2020 in R. Bharat relating to the Palghar incident. On perusal of the FIRs and complaints Supreme Court noted that those were worded in identical terms leaving no manner of doubt that an identity of cause of action formed the allegations levelled against the petitioner on the basis of the programme which was broadcast on 21.04.2020; the language, content, sequencing of paragraphs and their numbering were found to be identical.

28.4. Supreme Court noted that petitioner is a media journalist. Exercise of journalistic freedom lie at the core of speech and expression protected by Article 19(1)(a). Airing of views on television shows which the petitioner hosts is in the exercise of his fundamental right to speech and expression under Article 19(1)(a). Supreme Court observed that India's freedoms will rest safe as long as journalists can speak to power without being chilled by a threat of reprisal. Though exercise of that fundamental right is not absolute, but to allow a journalist to be subjected to multiple complaints and in pursuit of his remedies to traverse multiple states and jurisdictions when faced with successive FIRs and complaints bearing the same foundation would have a stifling effect on the exercise of that freedom. Though the right of a journalist under Article 19(1)(a) is no higher than the right of a citizen to speak and express, we as a society should never forget that one cannot exist without the other. Free citizens cannot exist when the news media is chained to adhere to one position.

28.5. In that backdrop Supreme Court held that the manner in which the petitioner was subjected to numerous FIRs in several states besides the union territory of Jammu and Kashmir on the basis of identical allegations arising out of the same television show would leave no manner of doubt that its intervention was necessary to protect the rights of the petitioner as a citizen and as a journalist to a fair treatment. In such a situation to require the petitioner to approach the jurisdictional High Courts for quashing of the FIRs would result in a multiplicity

of proceedings and unnecessary harassment to the petitioner.

28.6. Drawing a distinction between registration of numerous FIRs and complaints covering different states on the one hand and investigation into FIR No.164 of 2020 in the N. M. Joshi Marg Police Station, Mumbai, Supreme Court observed that petitioner in the exercise of his right under Article 19(1)(a) was not immune from an investigation; a balance has to be drawn between the exercise of a fundamental right under Article 19(1)(a) and investigation for an offence under the Cr.P.C. It was categorically held that all other FIRs in respect of the same incident constitute a clear abuse of the process and must be quashed.

28.7. Accordingly, all the other FIRs numbering 14 were quashed, further making it clear that no other FIR or complaint shall be initiated or pursued in any other forum in respect of the same cause of action emanating from the broadcast on 21.04.2020 by the petitioner on R. Bharat.

28.8. On the prayer of the petitioner for transfer of investigation to CBI in respect of the sole remaining FIR, Supreme Court emphasized at the outset that the transfer of FIR No.238 of 2020 from Sadar Police Station, Nagpur to N. M. Joshi Marg Police Station in Mumbai was with the consent of the petitioner and on his request. Having accepted the transfer of investigation from Sadar Police Station, Nagpur to N. M. Joshi Marg Police Station in Mumbai, petitioner now sought to question that very investigation by the Mumbai Police. Referring to the precedents on this issue, Supreme Court held that transfer of an investigation to the CBI is not a matter of routine. An investigation may be transferred to the CBI only in 'rare and exceptional cases'. This power must be used sparingly. Various tests have been laid down and in the event of fulfillment or satisfaction of those tests only a constitutional court may consider transfer of investigation to the CBI. Having noted that it was the petitioner himself who had requested for and consented to transfer of investigation of the FIR from Sadar Police Station, Nagpur to N. M.

Joshi Marg Police Station in Mumbai which investigation he sought to pre-empt by seeking transfer of investigation to the CBI, Supreme Court held that the basis or the grounds on which the petitioner sought transfer of investigation to the CBI, such as, duration of interrogation, nature of questions asked etc. were untenable. Therefore it was held that no case was made out for transfer of investigation to the CBI. Accordingly that relief was declined to the petitioner.

28.9. Supreme Court also discussed the allegation of criminal defamation made against the petitioner *vis-a-vis* President of the Congress party. In this connection, Supreme Court referred to the provisions of section 199 Cr.P.C. and its decision in **Subramanian Swamy** (*supra*) where it was held that in the case of criminal defamation neither can any FIR be filed nor can any direction be issued under section 156(3) Cr.P.C. It is only a complaint which can be instituted that too by the person aggrieved. In the light of the above it was clarified that the FIR which is under investigation in the N. M. Joshi Marg Police Station in Mumbai does not and cannot cover any alleged act of criminal defamation under section 499 IPC which offence will not form the subject matter of the investigation.

28.10. In the concluding portion of the judgment, Supreme Court held that it would be inappropriate to exercise its jurisdiction under Article 32 of the Constitution for the purpose of quashing FIR No.164 of 2020 under investigation at N. M. Joshi Marg Police Station in Mumbai while clarifying that it had not expressed any opinion on the said FIR. Holding that petitioner had equally efficacious remedy available before the High Court under section 482 Cr.P.C., petitioner was accordingly relegated to pursue his remedies under the Cr.P.C., observing that the relief of quashing the said FIR can be considered by the High Court on its own merit.

28.11. In respect of FIR No.137 of 2020, Supreme Court declined to entertain the challenge to the same as the basis on which its jurisdiction was

invoked in the first writ petition i.e., filing of multiple FIRs in various states, was absent in the subsequent writ petition assailing FIR No.137 of 2020. However, liberty was granted to the petitioner to pursue his remedies as available in law in respect of the said FIR to be considered on its own merit by the competent court.

29. Thus from the above, it is quite evident that Supreme Court did not express any opinion on the two impugned FIRs. Liberty was granted to the petitioner to avail his remedy in accordance with law in respect of the two FIRs with the observation that if any such challenge is made that shall be considered on its own merit by the High Court.

30. This is how challenge to the two FIRs is before us.

31. Before we advert to the two FIRs and the related materials, it would be apposite to examine the relevant legal provisions and the judicial precedents.

32. Section 482 Cr.P.C. provides that nothing therein 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 the said Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

33. Examining this provision, Supreme Court in *State of Karnataka Vs. L. Muniswamy*, **1977 (2) SCC 699** held as under:

“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 proceedings 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.”

34. Thus Supreme Court observed that saving of the High Court's inherent powers is designed to achieve a salutary public purpose; 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.

35. The question as under what circumstances and in what categories of cases, a criminal proceeding can be quashed either in exercise of the extra-ordinary powers of the High Court under Article 226 of the Constitution or in exercise of its inherent powers under section 482 Cr.P.C. was considered in great detail by the Supreme Court in **Bhajan Lal** (*supra*). In the backdrop of the interpretation of the various relevant provisions of Cr.P.C. and the judicial precedents relating to exercise of the extra-ordinary power under Article 226 or the inherent powers under section 482 Cr.P.C., Supreme Court laid down 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. The categories of cases by way of illustration mentioned in paragraph 102 of the report are as under:

“(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;

(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) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;
- (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) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;
- (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.”

35.1. However, Supreme Court sounded a note of caution to the effect that power of quashing a criminal proceeding should be exercised very sparingly and with circumspection, that too, in the rarest of rare cases. Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. It was also mentioned that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

36. In **S. Devendrappa** (*supra*), Supreme Court again examined the powers possessed by the High Court under section 482 Cr.P.C. and observed that the very width and plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. Inherent power should not be exercised to stifle a legitimate prosecution. It is not 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. Allegations of *mala fides* against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.

37. Supreme Court in *Priya Vrat Singh Vs. Shyam Ji Sahai*, (2008) 8 SCC 232, relied upon category 7 as laid down in **Bhajan Lal** (*supra*) and observed that section 482 Cr.P.C. envisages three circumstances under which inherent jurisdiction of the High Court may be exercised, namely, (1) to give effect to an order under the Cr.P.C., (2) to prevent abuse of the process of court, and (3) 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. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. In exercise of such 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 proceeding would otherwise serve the ends of justice. No hard-and-fast rule can be laid down in this regard.

38. Similar view was expressed in *Vineet Kumar Vs. State of UP*, (2017) 13 SCC 369. It was held that inherent power given to the High Court under section 482 Cr.P.C. is with the purpose and object of advancement of justice. When there are materials to indicate that a criminal proceeding is manifestly attended with *mala fide* and proceeding is maliciously instituted with an ulterior motive, High Court will not hesitate in exercise of its jurisdiction under section 482 Cr.P.C. to

quash the proceeding under category 7 as enumerated in **Bhajan Lal** (*supra*).

39. In *State of Telangana Vs. Habib Abdullah Jeelani*, (2017) 2 SCC 779, the issue that arose for consideration before the Supreme Court was whether the High Court while refusing to exercise inherent powers under section 482 Cr.P.C. to interfere in an application for quashment of investigation, can restrain the investigating agency from arresting the accused persons during the course of investigation. In the course of the said judgment, Supreme Court again reiterated the proposition that once an FIR is registered, accused persons can always approach the High Court under section 482 Cr.P.C. or under Article 226 of the Constitution for quashing of the FIR. Of course, Supreme Court reiterated that the court has to be more cautious while exercising power under section 482 Cr.P.C. It casts an onerous and more diligent duty on the court. Court should exercise judicial restraint. In that case, it was found that while the High Court did not interfere with the investigation under section 482 Cr.P.C. but at the same time directed that the investigating agency should not arrest the accused persons. Supreme Court held that this was legally unacceptable; if the High Court had declined to interfere with the investigation, it was inconceivable and unthinkable to pass order not to arrest the accused persons.

40. Restating the principles laid down in **Bhajan Lal** (*supra*) and reiterated in **M. Devendrappa** (*supra*), Supreme Court in **Kamal Shivaji Pokarnekar** (*supra*) held that quashing of criminal proceeding is called for in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. Defences that may be available to the accused during the trial which may lead to acquittal are not grounds for quashing the complaint at the threshold.

41. Having broadly surveyed the law relating to exercise of jurisdiction under section 482 Cr.P.C., a brief reference may be made to the penal sections which have been invoked against the petitioner. Though a number of sections have been

mentioned in the two FIRs, after the judgment of the Supreme Court excluding criminal defamation from the purview of investigation, the main sections which remain on board are sections 153, 153A, 153B and 295A IPC. As per section 153, whoever malignantly or wantonly does anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, commits an offence under section 153; the sentence thereunder depends upon whether the offence of rioting is committed in consequence of such provocation or whether no offence of rioting is committed.

42. Section 153A deals with promoting enmity between different groups on grounds of religion etc. and doing acts prejudicial to maintenance of harmony. Relevant portion is sub-section (1)(a) and (b). The gravamen of the above provision is that if a person by words, either spoken or written, or by signs or by visible representations or otherwise promotes or attempts to promote on the grounds of religion etc., disharmony or feelings of enmity, hatred or ill-will between different religious groups or communities etc. or commits any act which is prejudicial to the maintenance of harmony between different religious groups or communities etc. and which disturbs or is likely to disturb the public tranquility, commits an offence under section 153A.

43. Section 153B covers the offence committed either by words, whether spoken or written, or by signs or by visible representations or otherwise making of any imputation or assertion that any class of persons by reason of their being members of any religious group or community etc. cannot bear true faith and allegiance to the Constitution of India or uphold the sovereignty and integrity of India; thus acting prejudicial to national integrity.

44. Likewise, section 295A covers the offence of deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or

religious beliefs by words, either spoken or written, or by signs or by visible representations or otherwise.

45. If the sections alluded to hereinabove are carefully analysed, it would be seen that the common thread running through all the sections is promoting or attempting to promote disharmony or feelings of enmity, hatred or ill-will between different religious groups or communities etc.; thus doing acts prejudicial to maintenance of harmony and national integration.

46. It is true that Supreme Court in **Ramji Lal Modi** (*supra*) had upheld the constitutional validity of section 295A IPC by holding that this section falls well within the protection of Clause (2) of Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution.

47. A Special Bench of this Court in **Gopal Vinayak Godse** (*supra*) was called upon to adjudicate a challenge made to an order of forfeiture passed by the Delhi Administration in respect of a book called “*Gandhi-hatya Ani Mee*” (Gandhi-assassination And I). In the forfeiture order it was mentioned that Lt. Governor, Delhi was satisfied that the said book contained matter which promoted feelings of enmity and hatred between Hindus and Muslims in India and thus publication of the said book was punishable under section 153A IPC.

47.1. In that context, the Special Bench examined as to whether a conviction under section 153A could be had on the charge that the offending passages promoted feelings of enmity or hatred between Hindus and Muslims in India. It was held that if the charge would be unsustainable in a criminal court, the order of forfeiture must fail. It was further held that the matter charged as being within the mischief of section 153A must be read as a whole. One cannot rely on stray, isolated passages for proving the charge nor indeed can one take a sentence here

and a sentence there and then connect them by a meticulous process of inferential reasoning.

48. In **Manzar Sayeed Khan** (*supra*) relied upon by both the sides, Supreme Court referred to the provisions of section 153A IPC and held that 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 people to violence is the *sine qua non* of the offence under section 153A IPC. Prosecution has to prove *prima facie* the existence of *mens rea* on the part of the accused. The matter complained of as being within the ambit of section 153A 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 then connect them by a meticulous process of inferential reasoning. Supreme Court referred to its earlier decisions and observed that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men and not those of weak and vacillating minds nor of those who scent danger in every hostile point of view. Again Supreme Court held that the common feature in sections 153A 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; 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.

49. Having noticed the relevant legal provisions and the judicial precedents, the two FIRs may now be considered.

50. We take up FIR No.164 of 2020 first. As already noticed, this FIR was initially lodged before the Sadar Police Station at Nagpur where it was registered as FIR No.238 of 2020. It was transferred to N. M. Joshi Marg Police Station,

Mumbai on orders of the Supreme Court dated 24.04.2020, which was subsequently affirmed in the judgment dated 19.05.2020. At N. M. Joshi Marg Police Station, the said FIR was re-numbered as FIR No.164 of 2020. While registering the FIR, the investigating authority recorded the contents of the first information lodged by respondent No.3 as follows:-

50.1. Respondent No.3 is Working President of Maharashtra Pradesh Congress Committee. On 21.04.2020, while he was watching the debate on R. Bharat hosted by the petitioner, the discussion was about the murder of two Hindu *Sadhus* in Palghar district on 16.04.2020. Respondent No.3 alleged that petitioner made statements like, saints are murdered in the country; 80% of the population of India are Hindus; is it a sin in India to be a Hindu; to wear saffron; whether people would remain calm if any *Maulvi* or *Padri* is killed; whether Sonia Gandhi of Italy would have kept quiet. It is alleged that petitioner further stated that the Congress party and Sonia Gandhi who is from Rome, would not have kept quiet. She is happy that saints are murdered on the road in a place where she has her own government. She would sent a report to Italy that she was killing Hindu saints in a place where she has a government and for this, she would be praised.

50.2. Informant also alleged that petitioner thereafter exclaimed that these people should be ashamed and asked whether these people thought Hindus would keep quiet. Informant alleged that from the above, feelings of the petitioner towards the people of Muslim and Christian religions were quite clear and that he was instigating the Hindu people against the people of Muslim and Christian religions.

50.3. He further alleged that petitioner had defamed Smt. Sonia Gandhi, President of the Congress party as well as the Congress party by making baseless statements against her. Such statements of the petitioner will increase enmity between political parties and also between Hindu, Muslim and Christian people of the country leading to unrest in the country due to religious violence. Besides, such

statements of the petitioner has led to a feeling of insecurity in the minds of minority community people of the country, escalating religious enmity resulting in an atmosphere of religious violence. Thus, petitioner was accused of creating enmity between people of Hindu, Muslim and Christian religions and also of destabilizing national integrity and peace. Along with the first information, respondent No.3 - the informant also submitted a pen-drive containing the video clip of the said broadcast.

51. Transcript of the said broadcast aired on 21.04.2020 has been placed on record. Before perusing the same, an analysis of the first information lodged by respondent No.3 as the informant may be made.

52. From this information what is discernible is that according to the informant, petitioner made a statement like two Hindu *Sadhus* were killed and asked whether in a country where 80% of the population are Hindus, is it a sin to be a Hindu or to wear saffron. In contradistinction he asked whether Smt. Sonia Gandhi and the Congress party would have kept quiet if a *Maulvi* or *Padri* was killed. Then petitioner launched an attack on the foreign origin of Smt. Sonia Gandhi; asking whether “these people” thought that Hindus will keep quiet.

53. *Prima facie*, it appears that petitioner as a media journalist had questioned the response or rather the alleged non-response of the Congress party and its President Smt. Sonia Gandhi to the killing of two Hindu saints juxtaposing this with the question as to whether the Congress party or Smt. Sonia Gandhi would have kept quiet if any *Maulvi* or *Padri* was killed. Thereafter petitioner made allegations against the foreign origin of Smt. Sonia Gandhi.

54. It is quite clear that the object of or the target of the petitioner's attack was primarily Smt. Sonia Gandhi and the Congress party. There was no mentioning of either the Muslim community or the Christian community. It would be too far-

fetches to say that two religious communities were involved in the debate. As a matter of fact, there was no reference to the Muslim community or to the Christian community.

55. If this information is read together with the transcript of the broadcast aired on R. Bharat on 21.04.2020 which is also part of the FIR it is *prima facie* evident that the target of attack of the petitioner was the Congress party and its leadership represented by Smt. Sonia Gandhi. Contrary to what the informant alleged, petitioner is reported to have said that the way the two saints were killed if in the same way somebody else was killed, if a *Padri* was killed or if a *Maulvi* was killed, would the Congress Government have remained silent? Though petitioner remarked that some people thought that Hindu community is the weakest community, there was no reference to any other community. In fact one of the panelists i.e., Acharya Vikramaditya while questioning the silence of filmstars like Aamir Khan, stated that saints were made sacrificial lambs and that the Congress supporters should be ashamed by trying to make this a religious issue and trying to divide the nation on religious ground. Then the petitioner stated that the murders of the two Hindu *Sadhus* is a blot on the society. Referring to Pehlu Khan, Akhlaq and Tabrez, petitioner stated that we will not forgive their murderers. Then he posed the question as to what mistake the two saints had committed? What was the problem in speaking up? Is it because they were saints? Is it because they were Hindu saints? Petitioner thereafter posed a question to Mr. Pramod Krishnan (Congress supporter) and asked him what was in the mind of his party against the Hindu religion. He stated that police of our country does not kill anybody rather they help but those in Palghar were not police but were people who were funded by politicians. Then he asked whether the Congress party said that saints should be caught and killed?

56. While the transcript is long considering the lengthy debate, what is unmistakable is that the debate centered around a very sensitive subject i.e., killing

of two Hindu *Sadhus*. Petitioner had highlighted the fact that this killing had taken place in a state where the Congress party was part of the ruling dispensation. The crux of his questioning or statements was relating to the response of the Congress party in general and its President Smt. Sonia Gandhi in particular to the unfortunate incident. What is deducible is that petitioner had accused the Congress party and its President of having a communal mindset, of being communal in their response or rather in their silence *vis-a-vis* the unfortunate incident. However, if the transcript together with the first information are read as a whole, we do not find any statement made by the petitioner which can be construed to be against the Muslim community or Christian community. In such circumstances, it cannot be said that any offence has been committed by the petitioner of provoking rioting or promoting or attempting to promote, on the grounds of religion, disharmony or feelings of enmity, hatred or ill-will between different religious groups which is prejudicial to the maintenance of harmony between different religious groups or which disturbs or is likely to disturb public tranquility, thus prejudicial to national integrity. Neither any statement nor the conduct of the petitioner can be said to have been made deliberately and with malicious intention to outrage the religious feelings of any class of citizens of India or insulting any religion or religious beliefs of that class of citizens. A view may be taken that the language of the petitioner was quite sharp and vicious; it may also be construed as an act of defaming the Congress party or its President. But as pointed out by the Supreme Court, the offence of criminal defamation would be excluded from the purview of investigation of the present FIR because the said offence can only be taken cognizance of by a Magistrate on a complaint, that too, instituted by the person aggrieved.

57. It cannot also be overlooked that the present FIR was part of multifarious FIRs / complaints lodged by Congress party members and supporters in diverse jurisdictions, all total 15, relating to one and the same incident i.e., broadcast by the petitioner on 21.04.2020 on R. Bharat. Supreme Court found that all the FIRs /

complaints were worded in identical terms leaving no manner of doubt that an identity of cause of action underlay the allegations levelled against the petitioner on the basis of the programme which was broadcast on 21.04.2020. Supreme Court also found that the language, content, sequencing of paragraphs and their numbering were identical. In such circumstances, Supreme Court declared that all the other FIRs, excluding the first FIR lodged before the Sadar Police Station, Nagpur and now being investigated by N. M. Joshi Marg Police Station in Mumbai on transfer, in respect of the same incident constituted a clear abuse of the process and accordingly quashed all the other FIRs. The present FIR was also part of the multifarious FIRs and complaints. It just happened to be filed or lodged first in point of time, and the other FIRs / complaints thus became subsequent FIRs / complaints.

58. Thus, on an overall consideration, we are of the *prima facie* view that FIR No.164 of 2020 on the face of it does not make out commission of any criminal offence by the petitioner.

59. This leads us to FIR No.137 of 2020 lodged before the Pydhonie Police Station. Subject matter of this FIR is the broadcast on 14th and 15th April, 2020 relating to the Bandra incident. But this FIR was lodged on 02.05.2020 alleging that the said broadcast was made on 29.04.2020. We will advert to this aspect of the matter at a later stage. First let us examine the contents of the FIR and the transcript of the broadcast. As per summation of FIR contents made by the officer in charge of Pydhonie Police Station, petitioner had hatched criminal conspiracy in the programme of R. Bharat connecting Jama Masjid, Bandra with the crowd gathered near Bandra railway station thus making objectionable statements and hurting the religious feelings of the Muslim community; petitioner created religious hatred between two communities and increased enmity between them by insulting Muslim religion and their religious feelings; with the objective of committing communal atrocity, petitioner defamed the Muslim community.

60. As per statement of the informant - respondent No.4 dated 02.05.2020, there was a programme on R. Bharat TV channel on 29.04.2020 where petitioner made objectionable statements regarding the public gathering near Bandra railway station on 14.04.2020. According to the informant, petitioner had stated that at a little distance there was Jama Masjid in Bandra; near this Jama Masjid suddenly thousands of people had gathered. Then petitioner posed the question as to who had gathered the crowd near the masjid in Bandra and why every crowd gathering during the lockdown was near a masjid. According to the informant, Jama Masjid which is a pious place of worship was not at all concerned with the gathering of migrant workers near Bandra railway station. But petitioner gave it a communal colour thereby creating hatred amongst the communities and hurting the feelings of the Muslim community. Petitioner tried to create the impression that Muslim community is violent and is not following any kind of law. Thus it was alleged that petitioner had hatched a conspiracy with the objective of creating hatred amongst Hindu and Muslim communities. However, in the penultimate paragraph, informant mentioned the date of the broadcast as 14.04.2020.

61. The transcript of the broadcast has been placed on record. From the transcript it is evident that the broadcast was made on R. Bharat on 14th and 15th April, 2020. The transcript discloses that though petitioner had asked the question as to who caused the congregation of a crowd near a masjid in Bandra and that why was there a pattern of crowds gathering near masjids, petitioner juxtaposed the same by asking who were spreading rumours to ensure that the lockdown fails and thus working against our nation, branding them as traitors.

62. In the course of the debate, petitioner referred to the clashes in Surat and stated that there was an attempt to make people nervous. On that basis, petitioner posed the question as to which were the lobbies responsible for this. Towards the end of the programme, petitioner further asked why some people were happy with

violation of the lockdown and asked who were the villains of the lockdown who wanted chaos and clashes on the streets, who did not want social distancing norms to be followed and who wanted bloodshed. Petitioner asked one of the panelists as to why she was silent and why she did not speak up openly. While concluding the debate, in response to a statement made by a panelist that bringing in the masjid angle was an attempt to target a community, petitioner replied that there was no question of targeting any community. This part of the petitioner's statement is important, and is extracted hereunder:

“MUFTI ZIYAE: But to bring the Masjid angle, is like an attempt to target a community. Are you trying to say...

ARNAB GOSWAMI, EDITOR-IN-CHIEF: There is no question of targeting any community. This is fact based reporting that the incident took place outside Jama Masjid. There is no question of any religion. If it happened outside a temple, I would have said it happened outside a temple. Don't bring religion in every issue. We just said, a crowd gathered outside Jama Masjid. Everybody knows this. If it happened outside Siddhivinayak, I would have said that it happened outside Siddhivinayak temple. No, no, no, there is a problem in the way you see and hear things. It is not my mistake, it is your mistake. Ladies and gentlemen, I will report based on facts. Tonight, at the end, I will once again show full frame visuals of Bandra. Ladies and gentlemen, what happened in Bandra today, if it happens at any other place, then remember, this lockdown won't be successful. The war we are waging against Coronavirus for the last 3 weeks can never succeed if such an incident repeats. That's why look at these visuals and think that if it happens again anywhere, whether it is in Bahraich, Kanpur, then there will be huge losses to you, your family and me. That's why, think deeply, the PM has said this is an agnipariksha, so this is not an agnipariksha of just the Prime Minister, it's yours and ours too. I will be with you once again tomorrow at 7 pm on Poochta Hai Bharat. Till then, ladies and gentlemen, thank you and Namaskar.”

63. Thus, petitioner had clarified that there was no question of targeting any community. It was a fact that the incident had taken place outside the Jama Masjid but there was no question of any religion. He further clarified by saying that if the same incident had happened outside the Siddhivinayak temple or any other temple, he would have said the same thing and asked the panelists not to bring religion in every issue.

64. On an overall reading of the FIR, statement of the informant and transcript of the broadcast, it would be wrong to say that petitioner had made the statements in the broadcast with a view to defame or insult the feelings of any religious group or community. The tenor of the programme was petitioner trying to find out as to who were the people or which were the forces trying to derail or defeat the lockdown and encouraging violation of social distancing norms. A mention is made by the petitioner of the role played by one Vinay Dubey, a Nationalist Congress party activist having tweeted calling upon the migrant workers to congregate. Though the petitioner stated as a matter of fact that the crowd had gathered near the Jama Masjid, Bandra, he clarified his statement by saying that if such an incident had taken place outside a temple, he would have said the same thing. In such circumstances, to allege or impute any communal motive to what the petitioner had commented would be a distortion of the narrative. *Prima facie*, no offence as alleged can be said to have been committed by the petitioner.

65. As noted in the preceding paragraphs, the related broadcast took place on 14th and 15th April, 2020. This would be evident from the transcript as well as from the judgment of the Supreme Court. On 24.04.2020, Supreme Court granted interim protection to the petitioner in connection with FIR No.238 of 2020 since re-numbered on transfer as FIR No.164 of 2020 being investigated by the N. M. Joshi Marg Police Station in Mumbai, further staying proceedings arising out of all the other FIRs and complaints. It appears that to get over the Supreme Court order, this FIR was lodged belatedly on 02.05.2020 wrongly stating that the broadcast was made on 29.04.2020 when it was not so made.

66. From the above it is *prima facie* evident that clauses 1, 2 and 7 of **Bhajan Lal** (*supra*) would be attracted in the facts and circumstances of the case.

67. We have already noted and referred to the observations of the Supreme

Court that India's freedoms will rest safe as long as journalists can speak to power without being chilled by a threat of reprisal; free citizens cannot exist when the news media is chained to adhere to one position. We cannot have the spectacle of a Damocles' sword hanging over the head of a journalist while conducting a public debate. India is now a mature democracy. Seventy years into our republic we cannot be seen to be skating on thin ice so much so that mere mention of a place of worship will lead to animosity or hatred amongst religious communities causing upheaval and conflagration on the streets. Subscribing to such a view would stifle all legitimate discussions and debates in the public domain.

68. Beyond this, Court would not like to make any further comment on the matter at this stage.

69. Accordingly and in the light of the above, the following orders are passed:

- (1) This petition is admitted for hearing;
- (2) Since all the parties are represented, issuance of notice stands obviated. However, office of the Attorney General of India be notified as regards challenge to *vires* of sections 153A and 153B(1) IPC;
- (3) All further proceedings in FIR No.164 of 2020 before the N. M. Joshi Marg Police Station, Mumbai and FIR No.137 of 2020 before the Pydhonie Police Station, Mumbai shall remain suspended; and
- (4) Interim order passed on 09.06.2020 to the effect that no coercive steps shall be taken against the petitioner *vis-a-vis* the above two FIRs shall continue till disposal of this petition.

(RIYAZ I. CHAGLA, J.)

(UJJAL BHUYAN, J.)