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CRL O.P. No.1212 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.01.2025

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

CRL OP.No.1212 of 2025

A.Shankar @ Savukku Shankar

... Petitioner

Vs

State rep. by:-

The Inspector of Police
Land Fraud Investigation Wing-II
CCB-I, Chennai.
[Cr. No.241 of 2024]

... Respondent

PRAYER: - The Criminal Original Petition is filed under Section 483 of B.N.S.S., praying to grant bail to the petitioner/Accused in Cr. No.241 of 2024 on the file of the respondent police.

For Petitioner : Mr.B.Vetrivel

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Criminal side)

ORDER

The petitioner is figuring as the second accused in Crime No.241 of 2024 registered in the file of the respondent for the offences under Sections 221, 222, 353(1)(b) and 353(2) of BNS, 2023. He was taken to judicial custody on 24.12.2024.



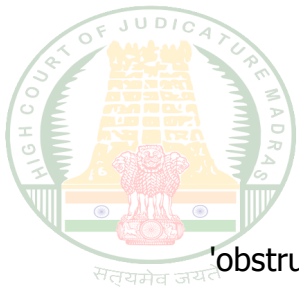
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2. Thiru.Siva Subramanian, Inspector of Police, Land Fraud Investigation Wing-II, CCB-III, is the defacto complainant in this case. He is the Investigating Officer in Crime No.182 of 2024. The petitioner herein had commented in a You Tube video on 05.12.2024 that it is a false case. The petitioner was summoned to the Office of the defacto complainant and questioned in respect of Crime No.182 of 2024. The petitioner appears to have raised counter queries. When the investigation officer / defacto complainant herein requested the petitioner to furnish him with the necessary documents, the petitioner had taken the stand that he had nothing to say further in the matter. This has been labeled as an attempt on the part of the petitioner to mislead the general public by making false statements in his You Tube channel.

3. Based on this complaint, the respondent had registered Crime No.241 of 2024 under the aforesaid provisions.

4. Section 221 of BNS, 2023 can be registered only if a public servant is obstructed in the discharge of his public functions. I fail to understand as to how the investigation in Crime No.182 of 2024 will be obstructed by the comments made by the petitioner in his You Tube channel. The expression

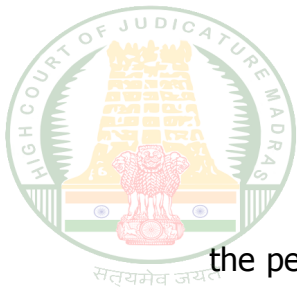


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'obstructs' occurring in Section 221 of BNS has a clear and precise meaning. It involves 'deliberate stoppage'. The petitioner has not stopped the investigating officer from proceeding with the investigation. The investigating officer must be having his own dictionary, where this word has a meaning that suits the convenience of the police.

5. Section 222 of BNS, 2023 will kick in when a person bound by law to render assistance to any public servant in the execution of his public duty intentionally omits to give such assistance. According to the petitioner, Crime No.182 of 2024 is a false case. He may have his own reasons to form such a opinion. The petitioner is not obliged to assist the defacto complainant in any manner. When the petitioner is not legally bound to render assistance, Section 222 of BNS cannot be invoked against him.

6. Invoking Section 353 of BNS, 2023 is nothing short of perversity. According to the prosecution, uploading the video in question conduces to public mischief. The petitioner has taken a particular stand in respect of a specific criminal case. His views may be right or wrong. It is for the criminal court to make its pronouncement ultimately. But, by no stretch of imagination, the expression of views by the petitioner can be said to cause fear or alarm to the public. No reasonable man would say that after hearing



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the petitioner any person would be induced to commit an offence against the State or against the public tranquility.

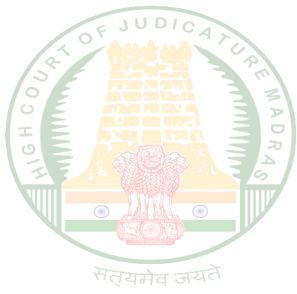
7. Section 353(2) of BNS reads as follows:

353(2) Whoever makes, publishes or circulates any statement or report containing false information, rumour or alarming news, including through electronic means, with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

8. The comparable provisions in IPC are Section 505(2) and 153A of IPC. They are as follows:-

“Section 505(2) : *Statements creating or promoting enmity, hatred or ill-will between classes* —

(2) 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



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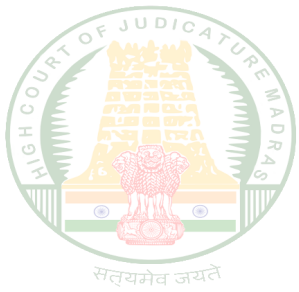
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imprisonment which may extend to three years, or with fine, or with both.”

153A. “Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony — (1) Whoever— (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or (b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity.

9. In Manzar Sayeed Khan and Ors. vs. State of Maharashtra and Ors (2007) 5 SCC 1, the Hon'ble Supreme Court held as follows :

"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 153A of IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section



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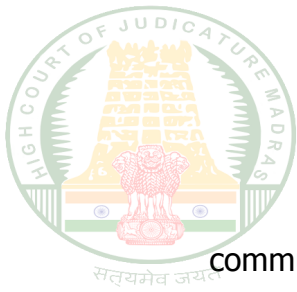


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153A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning"

10. In Ramesh Chotalal Dalal v. Union of India and : [1988]2SCR1011 , this Court held that TV serial "Tamas" did not depict communal tension and violence and the provisions of Section 153A of IPC would not apply to it. It was also not prejudicial to the national integration falling under Section 153B of IPC. Approving the observations of **Vivian Bose, J.** in **Bhagvati Charan Shukla v. Provincial Government AIR 1947 Nagpur 1**, the Court observed that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It is the standard of ordinary reasonable man or as they say in English Law, "the man on the top of a clapham omnibus.

11. Again in Bilal Ahmed Kaloo v. State of A.P. 1997 Cri.L.J4091, it is held that the common feature in both the Sections, viz., 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



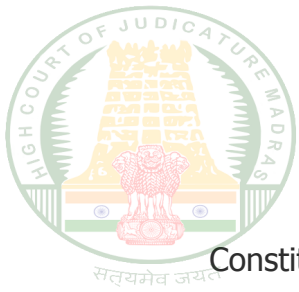
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communities, it is necessary that at least two such groups or communities should be involved. Further, it was observed that merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two Sections.

12. The petitioner's video does not involve two groups at all. There is no reference to religion, race, place of birth, residence, language, caste or community. The Hon'ble Supreme Court had clearly held that unless one group is sought to be pitted against the other on the aforementioned grounds, the penal provisions are not at all attracted.

13. The petitioner as a YouTuber is actively commenting on current issues. He is entitled to the protection of Article 19(1)(a) of the Constitution. Criticism of police investigation cannot warrant prosecution.

14. In **Vinod Dua vs. Union of India (UOI) and Ors. AIR 2021 SC 3239**, the Hon'ble Supreme Court clarified that every journalist will be entitled to protection in terms of *Kedar Nath Singh* as every prosecution under Section 124A IPC and 505 IPC must be in strict conformity with the scope and ambit of the said Sections as explained in, and completely in tune with the law laid down therein. After so holding, the Hon'ble Supreme Court quashed the FIR registered against the petitioner by invoking Article 32 of the



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Constitution of India.

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15. The petitioner is not asking for quashing the FIR registered against him. He is only seeking bail. I fail to understand as to how he was remanded to judicial custody in the first place. Even more surprising is the denial of bail by the Court below. Of late, we are witnessing registration of criminal cases and arrest of persons for having voiced certain opinions. While police cannot be restrained in advance from acting in a malafide manner, Judicial Magistrates and Sessions Courts can certainly step in to stem the rot. The simplest thing they can do is to refuse remand. When bail petitions are moved, they can be granted. Such liberal approach must be adopted when the only allegation made against the accused is that he made certain comments.

16. Democracy is all about opinions. In the market place of ideas, only those that have substance will stand. If a opinion is ill founded, it will fail in the long run. To foist a case against a person for making a certain assertion is indicative of a fascist approach. The target of a verbal attack can be any person. No one can be a holy cow. Prosecution is one thing. Arrest is entirely another. The Hon'ble Supreme Court in case after case has cautioned the police from effecting needless arrest. They appear to have fallen on deaf



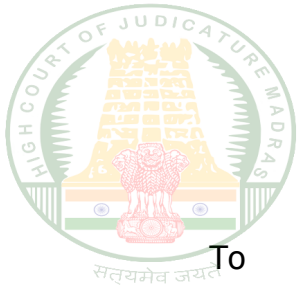
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ears. Only if violence is incited, police will be justified in interfering. Not otherwise. The petitioner is being hounded. He was slapped with preventive detention orders twice. When the Supreme Court came to his rescue, the State had circumvented the same by slapping successive cases. Such an approach betrays scant regard for rule of law. It is unfortunate that the petitioner was arrested for a petty reason. The malafides on the part of the police is evident all over. I condemn the respondent.

17. Accordingly, the petitioner, who is presently confined in Central Prison, Puzhal, Chennai is ordered to be released forthwith on bail on executing his own bond for a sum of **Rs.10,000/- (Rupees Ten Thousand only)** to the satisfaction of **Metropolitan Magistrate XI, Saidapet, Chennai**. I decline to impose any condition against the petitioner as I am satisfied that the very registration of the criminal case against the petitioner is not maintainable. With the above directions, the Criminal Original Petition is allowed.

17.01.2025

Neutral Citation : Yes / No
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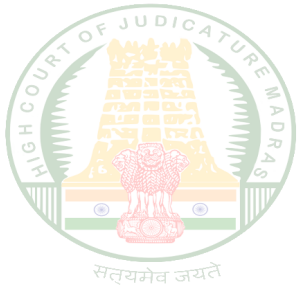


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To

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- 1.The Metropolitan Magistrate XI, Saidapet, Chennai.
- 2.The Public Prosecutor, Madras High Court, Chennai.
3. The Inspector of Police, Land Fraud Investigation Wing-II, CCB-I, Chennai.
4. The Superintendent of Police, Central Prison, Puzhal, Chennai.



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G.R.SWAMINATHAN, J.

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