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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.251 of 2020

Order reserved on: 4-3-2021

Order delivered on: 12-4-2021

Dr. Sambit Patra, S/o Sh. Rabindra Nath Patra, Age 45 years, R/o 1536, Deenanath Building, Chandrawal Road, Ghantaghar, Delhi-110007

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Principal Secretary, Department of Home, Govt. of Chhattisgarh, Mahanadi Bhawan, Atal Nagar, New Raipur (C.G.)

2. Station House Officer, Police Station Civil Lines, District Raipur (C.G.)

3. Superintendent of Police, District Raipur (C.G.)

4. Purna Chandra Padhi, age 35 years, S/o Shri Suresh Padhi, R/o House No.23, Romansque Villa, Labhandi, Telibandha, Raipur (C.G.)

5. Station House Officer, Police Station Bhilai Nagar, Bhilai, District Durg (C.G.)

6. Superintendent of Police, District Durg (C.G.)

7. Ankush Pillai, age 29 years, S/o Shri Bhaskar Pillai, R/o House No.04/B, Road – 9, Sector 10, Bhilai, Bhilai Nagar, District Durg (C.G.)

---- Respondents

AND

Writ Petition (Cr.) No.279 of 2020

Tajinder Pal Singh Bagga, S/o Sh. Preet Pal Singh, Aged about 34 years, R/o 20B/91B, Tilak Nagar, New Delhi-110018.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Principal Secretary, Department of Home, Govt. of Chhattisgarh, Mahanadi Bhawan, Atal Nagar, Naya Raipur (C.G.)

2. Station House Officer, Police Station Bhanupratappur, District Kanker (C.G.)

3. Superintendent of Police, District Kanker (C.G.)

4. Pankaj Wadhvani, Age 29 years, S/o Shri Rajkumar Wadhwani, Nayapara, Bhanupratappur, District Kanker (C.G.) Ph.No.:9691308100

---- Respondents

For Petitioners: -
Ms. Pinky Anand & Mr. Ajay Barman, Senior Advocates with Mr. Awadhesh Kumar Singh, Mr. Rajesh Ranjan, Mr. Vivek Sharma, Mr. Abhishek Gupta, Ms. Ayushi Agrawal and Mr. Sharad Mishra, Advocates.

For Respondents / State and its officers: -
Mr. Sunil Otwani, Additional Advocate General and Mr. Jitendra Pali, Deputy Advocate General.

For Respondent No.4 in both the petitions and Respondent No.7 in W.P.(Cr.)No.251/2020: -
Mr. Arjit Tiwari, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The petitioner herein in **W.P.(Cr.)No.251/2020** seeks quashment of **FIR No.192/2020** (Annexure P-2) registered in Police Station Bhilai Nagar, District Durg on 11-5-2020 at 7.29 p.m. for the offences punishable under Sections 499, 500, 501 & 505(1) of the IPC. Likewise, he also seeks quashment of **FIR No.200/2020** (Annexure P-1) registered at Police Station Civil Lines, Raipur on 11-5-2020 at 7.31 p.m. for the offences punishable under Sections 153A, 298 & 505(2) of the IPC.

2. The petitioner herein in **W.P.(Cr.)No.279/2020** seeks quashment of **FIR No.102/2020** (Annexure P-1)

registered at Police Station Bhanupratappur, District Kanker on 24-5-2020 for the offences punishable under Sections 153A, 505 of the IPC and Section 66 of the Information Technology Act, 2000.

3. Since common question of fact and law is involved in both the writ petitions, they were clubbed and heard together and are being disposed of by this common order.

Brief facts: -

4. Quashing of aforesaid FIRs in the two writ petitions has been sought in the following factual score: -

W.P.(Cr.)No.251/2020

5. The petitioner is a doctor by profession and presently, he is also discharging his duties as a National Spokesperson of a political party (Bharatiya Janata Party). On 8-5-2020, M.P. Congress made a tweet levelling certain allegations against Government of India for mishandling the outbreak of COVID-19 that has created havoc on the life and property of the people across the globe and they have tweeted that if the Congress Government would have been in power, then it would have handled the situation far better than the current Government and India would have been way ahead in dealing with the situation than other countries of the world. On 9-5-2020, the

petitioner through his social media platform, in reply to the said tweet, wittily tweeted a reply depicting an image that if Congress party would have handled this pandemic situation, there would have been corruption on mass scale under different heads. Copy of the tweet which has been filed and enclosed as **Annexure P-3** states as under: -

अगर कोरोना वायरस कांग्रेस सरकार के वक्त आया होता

₹5000 करोड़ मास्क घोटाला

₹7000 करोड़ कोरोना टेस्ट किट घोटाला

₹20,000 करोड़ जवाहर सैनिटाइजर घोटाला

₹26,000 करोड़ राजीव गांधी वायरस रिसर्च घोटाला

6. Thereafter, on 10-5-2020, a complaint before the DCP, Shaheed Marg Police Station, New Delhi was filed against the petitioner for registration of offence under Sections 499 & 500 of the IPC for using derogatory remarks against Congress party and its leaders. The petitioner, while replying a tweet where the images of said complaint were shared by ZEE Rajasthan's official tweeter handle, again tweeted vide **Annexure P-4** as under: -

> नेहरू और राजीव को भ्रष्ट कहने पे ..कांग्रेसियों ने complain किया है ..teacher से ..अभी तो और जलील होना बाकी है
>
> नेहरू ने तो कश्मीर समस्या को भी जन्म दिया ..न होते नेहरू न होता कश्मीर समस्या
>
> राजीव गांधी ने तो बोफ़ोर्स की चोरी की और 3000 सिखों का क़त्ल भी कराया
>
> जाओ और कम्प्लेन करो

7. In consequence of the above-stated two tweets made

by the petitioner expressed through social media platform, two FIRs came to be registered; firstly FIR No.192/2020 (**Annexure P-2**) on 11-5-2020 at 7.29 p.m. for offences punishable under Sections 499, 500, 501 & 505(1) of the IPC by respondent No.7 Ankush Pillai claiming to be the District President of Indian National Congress for making derogatory remarks against its top leaders. Similarly, thereafter, immediately on the same day (11-5-2020) at 7.31 p.m. another FIR No.200/2020 (**Annexure P-1**) was also lodged against the petitioner by respondent No.4 Purna Chandra Padhi at Police Station Civil Lines, Raipur for the offences punishable under Sections 153A, 298 & 505(2) of the IPC. Pursuant to that, wheels of investigation started running and by notice dated 2-6-2020 (**Annexure P-5**) issued under Section 91 of the Code of Criminal Procedure, 1973 by the Station House Officer, Police Station Civil Lines, Raipur, the petitioner herein has been asked to appear before the said officer on 8-6-2020 at Police Station Civil Lines, Raipur along with relevant documents for investigation into the offences registered against him in the said police station.

8. The aforesaid FIRs have been called in question by the petitioner stating that the impugned FIRs are nothing but clear abuse of the process of law, as on the basis of false and baseless accusations and

without prima facie case, respondents No.2 & 5 have registered the aforesaid offences against the petitioner mechanically with mala fide intent to harass him and curb his fundamental right to free speech and expression as well as to contravene his right to life and personal liberty which is contrary to the settled legal position. It has also been stated that the FIRs are absolutely illegal, arbitrary and unjust and it is nothing but a means to wreak vengeance through politically motivated criminal investigation by using the State machinery for oblique motive. It has been further stated that even if the allegations levelled in the impugned FIRs and the contents of the FIRs are taken as it is on their face value, they do not prima facie constitute any offence against the petitioner either under Sections 499, 500, 501, 505(1), 153A, 298 & 505(2) of the IPC and in the light of the principle of law laid down by their Lordships of the Supreme Court in the matter of **State of Haryana and others v. Bhajan Lal and others**[1], as such, both the FIRs deserve to be quashed.

9. Return has been filed by the State opposing the averments made in the petition stating inter alia that the police has registered FIRs on the basis of complaints made by the complainants / respondents

1 1992 Supp (1) SCC 335

No.4 & 7 of cognizable offences against the petitioner and a free, fair and transparent investigation is being carried out by the investigating authorities on the basis of complaints made by the complainants. It has been pleaded that the matter is under investigation and after due investigation in accordance with law, report would be filed against the petitioner before the jurisdictional Magistrate and as such, at this stage, FIRs are not liable to be quashed, as the scope of interference by this Court under Article 226 of the Constitution of India is limited and the FIRs prima facie disclose the commission of cognizable offences against the petitioner and therefore this Court would not like to interfere with the investigation and would permit the investigation into the offences to be completed. Therefore, no case for quashing the FIRs registered against the petitioner is made out looking to the gravity of offences with which the petitioner is charged. In the circumstances, the writ petition deserves to be dismissed.

10. Return has been filed by respondent No.4 opposing the writ petition and supporting the FIR lodged by him and as such, the petition deserves to be dismissed.

11. Rejoinder has been filed by the petitioner controverting the averments made in the return

filed by the respondents / State.

W.P.(Cr.)No.279/2020

12. On 10-5-2020, the petitioner in W.P.(Cr.) No.251/2020 (Dr. Sambit Patra), as noticed above, posted a tweet on his official account about the leaders of Congress party, thereafter, on 11-5-2020, the petitioner in W.P.(Cr.)No.279/2020 (Tajinder Pal Singh Bagga), who is also a Spokesperson of the same political party, posted the following tweet vide Annexure P-2: -

> "I don't agree with @sambitswaraj Ji, He said Rajiv Gandhi killed 3000 people. I want to say it's just official figure, unofficial figure is more than 5000. Rajiv Gandhi is Murderer."

13. In consequence of the above-stated tweet, on 24-5-2020, a complaint was lodged by respondent No.4 Pankaj Wadhvani at Police Station Bhanupratappur, Distt. Kanker, which is subject matter of FIR No.102/2020 (**Annexure P-1**) for the offences punishable under Sections 153A, 505 of the IPC & Section 66 of the Information Technology Act, 2000, against the petitioner, which has been called in question stating that the tweet posted by the petitioner does not constitute any offence under Sections 153A, 505 of the IPC & Section 66 of the IT Act. It has also been stated that the FIR smacks total non-application of mind, as Sections 153A & 505 of the IPC come into play only when two

or more than two different groups or communities are involved and in the present case, the said tweet nowhere states about any two groups/ communities other than Sikh community. Therefore, no offence is made out against the petitioner and Sections 153A & 505 of the IPC and even, Section 66 of the IT Act are not at all attracted, as such, FIR against the petitioner deserves to be quashed in the light of the decision of the Supreme Court in **Bhajan Lal's** case (supra).

14. Return has been filed by the State stating that on the complaint made by respondent No.4, cognizable offence has been found to have been committed by the petitioner and on that basis, FIR has been registered and investigation is under progress and no case for interference in the quashment of FIR is made out in terms of the decision of the Supreme Court in **Bhajan Lal's** case (supra) and as such, the writ petition deserves to be dismissed.

15. Return has also been filed by respondent No.4 opposing the allegations made in the writ petition stating that it is not a fit case for invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India to quash the FIR and the writ petition deserves to be dismissed.

16. Rejoinder has been filed by the petitioner controverting the averments made in the return.

Submissions: -

17. Ms. Pinky Anand, learned Senior Counsel appearing for the petitioner in **W.P.(Cr.)No.251/2020**, would submit as under: -

Qua FIR No.192/2020: -

17.1) The petitioner has been charged for the offence of defamation under Section 499 of the IPC which is punishable under Section 500 of the IPC. Similarly, he has also been charged for the offence punishable under Section 501 of the IPC which is printing or engraving a matter known to be defamatory and he has also been charged for the offences punishable under Section 505(1) of the IPC. All the offences so charged against the petitioner in FIR No.192/2020 are non-cognizable offences as per the Classification of Offences given in the First Schedule of the CrPC and once the offences are non-cognizable offences, the police officer is not empowered to investigate a non-cognizable case without the order of the Magistrate having power to try to such case or commit the case for trial. As such, there is clear bar for registering offence by the police in respect of the above-stated non-cognizable offences. Therefore, registration of FIR without the permission of Magistrate is clearly illegal and without authority of law. Reliance has been placed upon the decisions of the Supreme Court in the

matters of **Subramanian Swamy v. Union of India, Ministry of Law and others**[2] followed by the Supreme Court in the matter of **Arnab Ranjan Goswami v. Union of India and others**[3]. In respect of the offence of defamation under Section 500 of the IPC, the Magistrate can take cognizance only upon receiving complaint by the person who is aggrieved in view of the provision contained in Section 199 of the CrPC and since in the present case, respondent No.7 is not the aggrieved person in terms of Section 199 of the CrPC, therefore, complaint filed by him is clearly incompetent. Reliance has further been placed upon the decision of the Supreme Court in the matter of **S. Khushboo v. Kanniammal and another**[4].

Qua FIR No.200/2020: -

17.2) Taking the contents of the FIR as it is, no offence under Section 153A of the IPC is made out against the petitioner, as the standard prescribed by Section 153A requires intention of creating a disturbance of public order and tranquility. Speech, acts which are purely political comments and which do not promote enmity between classes or communities, do not fall within the meaning of Section 153A of the IPC. The gist of the offence under Section 153A is the intention

2 (2016) 7 SCC 221
3 (2020) 14 SCC 12
4 (2010) 5 SCC 600

to promote feelings of enmity or hatred between different classes of people. By merely expressing his political views on twitter, the petitioner has not committed any act which is prejudicial to the maintenance of harmony or is likely to disturb the public tranquility. The alleged FIR is unsustainable and merely an attempt to give a criminal colour of communal violence to a pure political disagreement with a view to cause harassment and feed political animosity. She would further submit that the alleged tweets were in response to the innuendo made by the M.P. Congress's official tweeter through a tweet which apparently undermined the competence of the ruling party to handle the pandemic situation. Therefore, the alleged tweets made by the petitioner cannot be read in isolation. The FIR is based on false, baseless and groundless allegations and apprehensions inasmuch as the two alleged tweets by the petitioner do not identify any different groups, therefore, the question of community hatred/animosity/outrage does not even arise. As such, taking the contents of the FIR as it is, no offence under Sections 153A, 298 & 505(2) of the IPC is made out against the petitioner. Reliance has also been placed upon the decision of the Supreme Court in the matter of **Manzar Sayeed Khan**

v. State of Maharashtra and another[5].

18. Mr. Ajay Barman, learned Senior Counsel appearing for the petitioner in W.P.(Cr.)No.279/2020, would submit that taking the contents of the FIR as it is, no offence under Sections 153A, 505 of the IPC and Section 66 of the Information Technology Act, 2000 are made out against the petitioner. He would adopt the argument of Ms. Pinky Anand, Senior Counsel, which she has advanced in W.P.(Cr.) No.251/2020, so far as the offences registered against the petitioner herein under Sections 153A and 505 of the IPC are concerned. He would further submit that Section 66 of the IT Act is not at all attracted by stating that Section 43 of the IT Act lays down a list of acts which are punishable under Section 66, as all the acts listed under Section 43 are purely related to the acts committed upon a computer system such as unauthorised access to files, alteration of the files, unauthorised procurement of files, injecting computer viruses, etc., but none of the acts laid down in the Section pertain to the alleged act in the present case i.e. causing disharmony between two or different groups. Hence, registration of FIR under Section 66 of the IT Act is nowhere justified and it only demonstrates the ill-motive of the complainant and the State police officers, as such, FIR registered

5 (2007) 5 SCC 1

against the petitioner deserves to be quashed.

19. Mr. Sunil Otwani, learned Additional Advocate General appearing for the State / official respondents, would submit that Section 155 of the CrPC does not prohibit registration of FIR in case of non-cognizable offence and even if the offences are non-cognizable, the police authorities can register the offence and relied upon the decision of the Supreme Court in the matter of **State of Punjab v. Raj Singh and another**[6]. He would further submit that *mala fides* on the part of the informant would be secondary importance once FIR is registered by the police and he would rely upon the decision of the Supreme Court in the matter of **State of Bihar and another etc. etc. v. Shri P.P. Sharma and another etc. etc.**[7]. He would also submit that scope of interference under Article 226 of the Constitution of India and under Section 482 of the CrPC is very limited and the said power can be exercised only to prevent the abuse of the process of the court or otherwise to secure the ends of justice. Section 482 of the CrPC does not confer any new powers on the High Court, it only saves the inherent power which the Court possessed before the enactment of the Code. Lastly, he would submit that FIR is not an encyclopedia of all facts and would rely upon the decision of the Supreme Court

6 (1998) 2 SCC 391
7 AIR 1991 SC 1260

in the matter of **Amish Devgan v. Union of India and others**[8] and further submit that the impugned FIRs in both the writ petitions are still at the stage of investigation and owing to interim order, investigation could not be completed and as such, the petitioners have failed to make out a case for quashment of FIRs and therefore both the writ petitions deserve to be dismissed allowing the respondents / State to proceed with investigation.

20. Mr. Arjit Tiwari, learned counsel appearing for the complainants in both the writ petitions, would submit that on the basis of complaints filed by the complainants, FIRs have rightly been registered against the petitioners after finding that the petitioners have committed cognizable offences which are now being investigated and the petitions being premature (both) deserve to be dismissed with cost(s).

21. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also went through the records with utmost circumspection.

22. At the outset, it would be appropriate to consider the scope of interference in first information report in extraordinary jurisdiction under Article 226 of the Constitution of India.

22.1) In the matter of **Pepsi Foods Ltd. and**

8 (2021) 1 SCC 1

another v. Special Judicial Magistrate and others[9], the Supreme Court has held that the accused can approach the High Court either under Section 482 of the CrPC or under Article 227 of the Constitution of India to have the proceeding quashed against him when the complaint does not make out any case against him.

22.2) The Supreme Court in **Bhajan Lal's** case (supra) laid down the principles of law relating to the exercise of the extraordinary power under Article 226 of the Constitution of India to quash the first information report and it has been held that such power can be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. In paragraph 102 of the report, their Lordships laid down the broad principles where such power under Article 226 of the Constitution/Section 482 of the CrPC should be exercised, which are as under: -

> "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

9 (1998) 5 SCC 749

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.

(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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will 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 and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

22.3) The principle of law laid down in **Bhajan Lal's** case (supra) has been followed recently by the Supreme Court in the matters of **Google India Private Limited v. Visaka Industries**[10], **Ahmad Ali Quraishi and another v. State of Uttar Pradesh and another**[11] and **Dr Dhruvaram Murlidhar Sonar v. State of Maharashtra and others**[12]. The Supreme Court in **Google India Private Limited** (supra), explained the scope of dictum of **Bhajan Lal's** case (supra) that the power of quashing a criminal proceeding be

10 (2020) 4 SCC 162
11 (2020) 13 SCC 435
12 (2019) 18 SCC 191

exercised very sparingly and with circumspection and "that too in the rarest of rare cases" as indicated in paragraph 103 therein.

Discussion and Analysis: -

23. Having noticed the scope of interference of this Court in a petition relating to quashment of FIR, it would be appropriate to revert to the facts of the present case.

FIR No.192/2020 {W.P.(Cr.)No.251/2020}: -

24. The offences with which the petitioner in W.P.(Cr.) No.251/2020 namely Dr. Sambit Patra has been charged are the offence of criminal defamation defined under Section 499 of the IPC which is punishable under Section 500 of the IPC and offence under Section 501 of the IPC which relates to printing of defamatory matter.

25. Section 500 of the IPC provides punishment for defamation. It reads as follows: -

> "**500. Punishment for defamation.**—Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

26. Similarly, Section 501 of the IPC which deals with printing or engraving matter known to be defamatory, reads as under: -

> "**501. Printing or engraving matter known to be defamatory.**—Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory

of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

27. Sections 500 & 501 of the IPC, according to the First Schedule of the CrPC in which Classification of Offences has been given and Part 1 of which deals with Offences under the Indian Penal Code, are non-cognizable offences. Once the offences are non-cognizable, Section 155 of the CrPC is attracted which states as under: -

> "**155. Information as to non-cognizable cases and investigation of such cases.**—(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.
>
> (2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.
>
> (3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.
>
> (4) xxx xxx xxx"

28. Section 155(1) of the CrPC mandates that when information is given to an officer in charge of a police station of the commission of a non-

cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf and refer the informant to the Magistrate.

29. A careful perusal of sub-section (2) of Section 155 of the CrPC would show that it starts with the words that “no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case”, as such, the provision is explicit and there is legislative injunction to the police officer not to investigate any non-cognizable offence without the order of the Magistrate having power to try such case, and once there is legislative injunction to the police authority not to investigate the non-cognizable case, it is the duty and responsibility of the police officer to see that non-cognizable cases are not investigated without express order of the Magistrate having jurisdiction and power to try such non-cognizable offences. The aforesaid provision of obtaining prior permission for investigation in non-cognizable offence is a mandatory requirement of law and if there is non-compliance of the said provision, the investigation which is carried out by the police officer would be rendered illegal, void and without authority of law.

30. In **Bhajan Lal's** case (supra), their Lordships of the Supreme Court considered the issue and it has clearly been held in guideline / sub-paragraph (4) of paragraph 102 of the report that 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 CrPC and extraordinary power and jurisdiction under Article 226 of the Constitution and inherent power under Section 482 of the CrPC can be exercised for quashing the first information report.

31. Similarly, in the matter of **Keshav Lal Thakur v. State of Bihar**[13], FIR for the offence punishable under Section 31 of the Representation of the People Act, 1950 was registered which is non-cognizable offence; quashing the FIR registered for offence under Section 31 of the said Act, their Lordships of the Supreme Court held that since the offence is a non-cognizable offence, investigation for the said offence without the order of the competent Magistrate under Section 155(2) of the CrPC is illegal and pertinently observed as under:-

> "3. ... On the own showing of the police, the offence under Section 31 of the Act is non-cognizable and therefore the police

13 (1996) 11 SCC 557

could not have registered a case for such an offence under Section 154 CrPC. Of course, the police is entitled to investigate into a non-cognizable offence pursuant to an order of a competent Magistrate under Section 155(2) CrPC but, admittedly, no such order was passed in the instant case. That necessarily means, that neither the police could investigate into the offence in question nor submit a report on which the question of taking cognizance could have arisen. While on this point, it may be mentioned that in view of the Explanation to Section 2(d) CrPC, which defines 'complaint', the police is entitled to submit, after investigation, a report relating to a non-cognizable offence in which case such a report is to be treated as a 'complaint' of the police officer concerned, but that explanation will not be available to the prosecution here as that relates to a case where the police initiates investigation into a cognizable offence – unlike the present one – but ultimately finds that only a non-cognizable offence has been made out."

32. In **Google India Private Limited** (supra), complaint filed under Section 200 of the CrPC for offence under Section 500 of the IPC was sought to be quashed on the ground that offence under Section 500 of the IPC is non-cognizable and covered by paragraph 102(4) of the judgment rendered in **Bhajan Lal's** case (supra). Rejecting the said plea, their Lordships pertinently held as under: -

"44. Applying the principles, the question would be whether the appellant had made out a case for granting relief in proceedings under Section 482 CrPC. As far as the offence of defamation is concerned, even though the offence under Section 500 is non-cognizable under the First Schedule to the CrPC, the matter would not be governed

> by para 102(2) of the judgment of this Court in *Bhajan Lal* as it is the case of a complaint and not of a police report. Equally, para 102(4) of *Bhajan Lal* is for the same reason inapplicable. ..."

33. In view of the above-stated settled legal position, investigation of a non-cognizable offence by the police without the permission of the competent Magistrate is illegal, subsequent permission granted cannot cure the illegality as police officer has no jurisdiction to investigate non-cognizable offence without the order of the Magistrate having jurisdiction to try such case.

34. Reverting to the facts of the present case in the light of the aforesaid statutory provision as considered and held by their Lordships of the Supreme Court in **Bhajan Lal's** case (supra), **Keshav Lal Thakur** (supra) and **Google India Private Limited** (supra), it is quite vivid that the offences which are subject matter of FIR No.192/2020 i.e. Sections 499, 500 & 501 of the IPC and with which the petitioner is charged are non-cognizable offences, undisputedly, therefore, in view of the specific statutory bar contained in Section 155(2) of the CrPC, respondent No.5 could not have registered FIR against the petitioner for the above-stated offences and could not have proceeded to investigate the matter. In view of the statutory bar as noticed above as well as covered by the judgment of the Supreme Court in **Bhajan Lal's** case

(supra) – paragraph 102(2) & (4), **Keshav Lal Thakur** (supra) and **Google India Private Limited** (supra), FIR registered under Section 154 of the CrPC against the petitioner for the offences punishable under Sections 499, 500 & 501 of the IPC deserves to be quashed on this score without entering into the merits of the matter.

35. Though offence under Section 505(1) of the IPC is non-cognizable offence under the First Schedule (Classification of Offences) appended to the CrPC. However, in exercise of the power conferred by sub-section (1) of Section 10 of the Criminal Law (Amendment) Act, 1932 and in super-session of all the notifications previously issued on the subject, the erstwhile State of Madhya Pradesh by notification No.33205 dated 19-11-1975 declared that the offence punishable under sub-section (1) of Section 505 of the IPC when committed in any area of the State of Madhya Pradesh shall be cognizable. It is stated at the Bar that the aforesaid notification issued by the erstwhile State of Madhya Pradesh has been adopted by the State of Chhattisgarh under the provisions of the Madhya Pradesh Reorganisation Act, 2000 and therefore offence under Section 505(1) of the IPC, though it is non-cognizable under the First Schedule appended to the CrPC but by the above-noticed M.P. State amendment and in view of its

adoption by the State of Chhattisgarh, it will be a cognizable offence in Chhattisgarh.

36. Section 505 of the IPC deals with Statements conducing to public mischief. Sub-section (1) of Section 505 provides as under: -

> "**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."

37. The aforesaid provision provides that whoever makes, publishes or circulates any statement, rumour or report with intent to cause, or which is likely to cause to any officer mutiny or otherwise disregard or fail in his duty; 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 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 liable to punishment under this Section.

38. The gravamen of the offence is making, publishing or circulating any statement, rumour or report as indicated in clauses (a), (b) and (c) of sub-section (1) of Section 505 of the IPC. Each one of the constituent elements of the offence under Section 505 of the IPC has reference to, and a direct effect on, the security of the State or public order. {See **Kedar Nath Singh v. State of Bihar**[14] (Constitution Bench).}

39. Reverting to the facts of the present case in the light of the definition and essential ingredients of Section 505(1) of the IPC, a careful perusal of the FIR would show that none of the ingredients of Section 505(1) is available and there is no allegation in the FIR which directly affects on the security of the State or public order. The contents of the two posts made by the petitioner may be incorrect / untrue, but it cannot be said that the same was posted with intent to incite or which is likely to incite any class or community of persons to commit any offence against any other

14 AIR 1962 SC 955

class or community. As such, merely making allegation against the leaders of a political party even if it is incorrect / untrue would not constitute offence under Section 505(1) of the IPC and therefore ingredients of Section 505(1) of the IPC i.e. either of the three clauses, are not available and thus, no offence under Section 505(1) of the IPC is made out against the petitioner.

40. However, the question posed herein can be considered from another angle. Offences under Sections 500 & 501 of the IPC with which the petitioner has been charged in FIR No.192/2020 fall within Chapter XXI of the IPC. Section 199 of the CrPC provides that cognizance of a complaint for the offence of defamation punishable under Chapter XXI of the IPC is barred except where the complaint is lodged by the person aggrieved and the defamed person. Section 199 of the CrPC provides as under: -

> "**199. Prosecution for defamation.**—(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:
>
> Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a

complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

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

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—

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

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

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

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

is alleged to have been committed.

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

41. The provisions of Section 198 of the CrPC, 1898 are mandatory. (See **Abdul Rehman Mahomed Yusuf v. Mahomed Haji Ahmad Agbotwala and another**[15].)

42. The above-stated proviso to sub-section (1) of Section 199 of the CrPC lays down an exception to the general rule that a complaint can be filed by anybody whether he is an aggrieved person or not, and modifies that rule by permitting only an aggrieved person to move a Magistrate in cases of defamation. (See **G. Narasimhan, G. Kasturi and K. Gopalan v. T.V. Chokkappa**[16].)

43. In **S. Khushboo** (supra), the Supreme Court has clearly held that in respect of the offence of defamation under Section 500 of the IPC, the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved and observed as under in paragraph 37 of the report: -

"37. It may be reiterated here that in respect of the offence of defamation, Section 199 CrPC mandates that the Magistrate can take cognizance of the

15 AIR 1960 SC 82
16 (1972) 2 SCC 680

offence only upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrate's Courts. There is of course some room for complaints to be brought by persons other than those who are aggrieved, for instance when the aggrieved person has passed away or is otherwise unable to initiate legal proceedings. However, in given facts of the present case, we are unable to see how the complainants can be properly described as "persons aggrieved" within the meaning of Section 199(1) CrPC. As explained earlier, there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or a readily identifiable group of people. "

44. Not only this, in **Subramanian Swamy** (supra), the constitutional validity of Section 499 of the IPC was questioned in which their Lordships of the Supreme Court have held that in case of criminal defamation neither can any FIR be filed nor can any direction be issued under Section 156(3) of the CrPC. It has observed in paragraph 207 of the report as under: -

"207. Another aspect required to be addressed pertains to issue of summons. Section 199 CrPC envisages filing of a complaint in court. In case of criminal defamation neither can any FIR be filed nor can any direction be issued under Section 156(3) CrPC. The offence has its own gravity and hence, the responsibility of the Magistrate is more. In a way, it is immense at the time of issue of process. Issue of process, as has been held in

Rajindra Nath Mahato v. T. Ganguly[17], is a matter of judicial determination and before issuing a process, the Magistrate has to examine the complainant. In *Punjab National Bank v. Surendra Prasad Sinha*[18] it has been held that judicial process should not be an instrument of oppression or needless harassment. The Court, though in a different context, has observed that there lies responsibility and duty on the Magistracy to find whether the accused concerned should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded, then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. In *Pepsi Foods Ltd. v. Special Judicial Magistrate*[9], a two-Judge Bench has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course."

45. The principle of law laid down by their Lordships of the Supreme Court in **Subramanian Swamy** (supra) was followed with approval recently by their Lordships in **Arnab Ranjan Goswami** (supra) in which it has been held in paragraph 53 as under: -

"53. A final aspect requires elaboration. Section 199 CrPC stipulates prosecution for defamation. Sub-section (1) of Section 199

17 (1972) 1 SCC 450
18 1993 Supp (1) SCC 499

stipulates that no court shall take cognizance of an offence punishable under Chapter XXI of the Penal Code, 1860 except upon a complaint made by some person aggrieved by the offence. However, where such a person is under the age of eighteen years, or suffers from a mental illness or from sickness or infirmity rendering the person unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the court, make a complaint on his or her behalf. Sub-section (2) states that when any offence is alleged against a person who is the President of India, Vice-President of India, Governor of a State, Administrator of a Union Territory or a Minister of the Union or of a State or of a Union Territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of their conduct in the discharge of public functions, a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor. Sub-section (3) states that every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed. Sub-section (4) mandates that no complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government or any other public servant employed in connection with the affairs of the State and of the Central Government, in any other case. Sub-section (5) bars the Court of Session from taking cognizance of an offence under sub-section (2) unless the complaint is made within six months from

> the date on which the offence is alleged to have been committed. Sub-section (6) states that nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.
>
> 55. In view of the clear legal position, Mr Kapil Sibal, learned Senior Counsel appearing on behalf of the State of Maharashtra has fairly stated that the FIR which is under investigation at N.M. Joshi Marg Police Station in Mumbai does not and cannot cover any alleged act of criminal defamation. We will clarify this in our final directions."

46. At this stage, it would be appropriate to notice Section 499 of the IPC, which deals with defamation. It states as under: -

> "**499. Defamation.**—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person."

Under the above-stated provision, the lawmaker has made the making or publishing of any imputation with a requisite intention or knowledge or reason to believe, as provided therein, that the imputation will harm the reputation of any person, the essential ingredients of the offence of defamation.

47. In the matter of **Mohd. Abdulla Khan V. Prakash K.**[19], the Supreme Court has defined the words "making of an imputation" and "publishing of an imputation", as under:-

> "10. An analysis of the above reveals that to constitute an offence of defamation it requires a person to make some imputation concerning any other person;
>
> (i) Such imputation must be made either
>
> (a) With intention, or
>
> (b) Knowledge, or
>
> (c) Having a reason to believe
>
> that such an imputation will harm the reputation of the person against whom the imputation is made.
>
> (ii) Imputation could be, by
>
> (a) Words, either spoken or written, or
>
> (b) By making signs, or
>
> (c) Visible representations
>
> (iii) Imputation could be either made or published.
>
> The difference between making of an imputation and publishing the same is:
>
> If 'X' tells 'Y' that 'Y' is a criminal — 'X' makes an imputation.
>
> If 'X' tells 'Z' that 'Y' is a criminal — 'X' publishes the imputation.
>
> The essence of publication in the context of Section 499 is the communication of defamatory imputation to persons other than the persons against whom the imputation is made.[20]

19 (2018) 1 SCC 615
20 Khima Nand v. Emperor, 1936 SCC OnLine All 307 : 1937 Cri LJ 806; Amar

48. The principle of law laid down in **Mohd. Abdulla Khan** (supra) has been followed recently by the Supreme Court in **Google India Private Limited** (supra) and it was held as under: -

> "107. In the light of this discussion, we may only reiterate that the criminal offence of defamation under Section 499 IPC is committed when a person makes a defamatory imputation which, as explained in *Mohd. Abdulla Khan*, would consist of the imputation being conveyed to the person about whom the imputation is made. A publication, on the other hand, is made when the imputation is communicated to persons other than the persons about whom the defamatory imputation is conveyed. A person, who makes the defamatory imputation, could also publish the imputation and thus could be the maker and the publisher of a defamatory imputation. On the other hand, a person may be liable though he may not have made the statement but he publishes it."

49. Reverting to the facts of the case, after having noticed the requisite ingredients to constitute the offence of defamation under Section 499 of the IPC, it appears that on the report of respondent No.7 Ankush Pillai, who is District President of Indian National Congress, the above-stated offence under Section 500 of the IPC came to be registered against the petitioner for making defamatory statement against late Shri Jawaharlal Nehru and late Shri Rajiv Gandhi, two former Prime Ministers of India.

50. In order to consider as to whether respondent No.7

Singh v. K.S. Badalia, 1964 SCC OnLine Pat 186 : (1965) 2 Cri LJ 693

did have the competence to lodge police report against the petitioner for the alleged defamatory statement within the meaning of Section 199 of the CrPC, it would be appropriate to notice Explanation 1 appended to Section 499 of the IPC, which states as under: -

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

51. Explanation 1 to Section 499 of the IPC protects the reputation of the deceased person. The prosecution, as envisaged in Explanation 1 to Section 499, lays two postulates that,

(i) the imputation to a deceased person is of such a nature; that would have harmed the reputation of that person, if he was living; and

(ii) the said imputation must be intended to be hurtful to the feelings of the family or other near relatives.

Unless the above-stated twin tests are satisfied, the complaint would not be entertained under Section 199 of the CrPC. The statutory scheme thus clearly indicates that person aggrieved must have an element of personal interest being either the person defamed himself or in case of deceased person, his family members or other near relatives

of the deceased person, against whom imputations have been made who claim to be person aggrieved. The offence of defamation can be compounded under Section 320 of the CrPC, but it is only by the person who is defamed.

52. The Patna High Court (DB) in the matter of **Bhagwan Shree Rajneesh v. The State of Bihar and another**[21], held that though person aggrieved is only the person defamed, an exception has been carved out in case of deceased person, but the "person aggrieved" even in such case of deceased persons are limited only to members of his family or near relatives whose feeling would be hurt by the defamatory statement, and none else.

53. Reverting to the facts of the present case in the light of the above-stated legal position and in view of the provisions contained in Section 199 of the CrPC, in the present case, respondent No.7 – first informant / complainant, who admittedly and undisputedly, is neither "family member" nor "near relative" of late Shri Jawaharlal Nehru and late Shri Rajiv Gandhi, the then Prime Ministers of India, cannot unilaterally assume unto himself the status of an aggrieved person within the meaning of Section 199(1) of the CrPC by asserting that his feelings were hurt by imputation and publication of alleged defamatory statement. As such, the

21 1986 SCC OnLine Pat 174

complaint / information made by respondent No.7 is also hit by Section 199(1) of the CrPC.

54. This issue can be viewed from another angle. Respondent No.7, who made complaint against the petitioner, is member / District President of Congress party. He has alleged that defamatory statement has been made by the petitioner qua the two leaders of their party, then also he was not the person aggrieved within the meaning of Section 199(1) of the CrPC. The Bombay High Court in the matter of **Balasaheb Keshav Thackeray v. State of Maharashtra and others**[22] dealing with similar issue, held that complaint filed by a member of political party alleging defamatory statement against its top leaders including President of the party by accused in election speech, the member who filed the complaint is not the person aggrieved within the meaning of Section 199(1) of the CrPC, and it was observed as under: -

> "13. ... In the instant case, it cannot be said that the Congressmen as a class is an identifiable body. Therefore, even assuming that the alleged statements of the petitioner are defamatory of the Congressmen, respondent No.2 is not entitled to file a complaint for the same. For the aforesaid reasons, I feel that respondent No.2 is not the person aggrieved within the meaning of the term as given in Section 199(1) of Criminal Procedure Code. ..."

55. Thus, considering the locus of respondent No.7 qua

22 2003(1) Mh LJ 775

lodgment of FIR from any of the permissible legal angles, he cannot be held to be the "person aggrieved" within the meaning of Section 199(1) of the CrPC to lodge FIR for the offence of criminal defamation. Consequently, the FIR lodged at his instance is not at all competent and deserves to be quashed.

56. In the light of the aforesaid discussion, now the following position qua FIR No.192/2020 would emerge: -

1. The petitioner has been charged for the offence under Section 499 of the IPC which is punishable under Sections 500, 501 & 505(1) of the IPC.

2. Offences under Sections 499, 500 & 501 of the IPC with which the petitioner has been charged are non-cognizable offences as per the First Schedule appended to the CrPC.

3. By virtue of the provision contained in Section 155(2) of the CrPC, police officer is not empowered to investigate the non-cognizable offence without the order of a Magistrate having power to try such case or commit the case for trial.

4. The Supreme Court in **Bhajan Lal's** case (supra), vide paragraph 102(4) of the report, has clearly held that in non-cognizable offence, no

investigation is permitted by the police officer without the order of a Magistrate as contemplated under Section 155(2) of the CrPC and in such case, power and jurisdiction under Article 226 of the Constitution / Section 482 of the CrPC can be exercised. In **Google India Private Limited** (supra), their Lordships following **Bhajan Lal's** case (supra) – paragraph 102(2) & (4), refused to quash the proceedings as it was the case based on a complaint for offence under Section 500 of the IPC and not of a police report, but the present case is the case of police report.

5. In **Keshav Lal Thakur** (supra), registration of FIR for the offence punishable under Section 31 of the Representation of the People Act, 1950 was quashed by their Lordships of the Supreme Court, as offence under Section 31 of the said Act is a non-cognizable offence and investigation for the said offence without the order of the competent Magistrate is illegal in view of the provision contained in Section 155(2) of the CrPC.

6. Similar preposition of law has been enunciated by the Supreme Court in **Subramanian Swamy** (supra) followed in **Arnab Ranjan Goswami** (supra).

7. Respondent No.7 herein is not the person

aggrieved within the meaning of Section 199(1) of the CrPC for the offence of criminal defamation.

8. Taking the contents of the FIR as it is, no offence under Section 505(1) of the IPC is made out against the petitioner.

57. In that view of the afore-stated findings summarised in paragraph 55, I am of the considered opinion that registration of FIR No.192/2020 against the petitioner for the offences punishable under Sections 499, 500, 501 & 505(1) of the IPC is clearly abuse of the process of the court and it is a fit case where the power and jurisdiction under Article 226 of the Constitution can be exercised in the ends of justice relying upon the principle of law laid down by their Lordships of the Supreme Court in **Bhajan Lal's** case (supra) followed in **Google India Private Limited** (supra). Accordingly, FIR No.192/2020 (**Annexure P-2**) registered against petitioner Dr. Sambit Patra in Police Station Bhilai Nagar, District Durg on 11-5-2020 at 7.29 p.m. for the offences punishable under Sections 499, 500, 501 & 505(1) of the IPC at the instance of respondent No.7 deserves to be quashed.

FIR No.200/2020 {W.P.(Cr.)No.251/2020}: -

58. This FIR has been registered against petitioner Dr. Sambit Patra on the complaint made by respondent

No.4 Purna Chandra Padhi claiming to be the President of Chhattisgarh Youth Congress. The basis of this FIR is the tweet made by the petitioner vide **Annexure P-4** in which the petitioner has alleged that the former Prime Minister of the country Late Shri Jawaharlal Nehru is responsible for the Kashmir problem and the role of Late Shri Rajiv Gandhi in Anti Sikh riots and in Bofors Scam, pursuant to which this FIR for the offences under Sections 153A, 298 & 505(2) of the IPC has been registered by respondent No.2 Station House Officer, Police Station Civil Lines, Raipur and the petitioner was directed to appear on 8-6-2020 at Police Station Civil Lines, Raipur. It is the case of the petitioner that taking the contents of the FIR as it is, no offence under Sections 153A, 298 & 505(2) of the IPC are made out and therefore in the light of the parameters laid down in the judgment of the Supreme Court in **Bhajan Lal's** case (supra), the FIR deserves to be quashed.

59. Offence under Section 298 of the IPC has been registered against the petitioner in this FIR. Section 298 of the IPC states as under: -

> "**298. Uttering, words, etc., with deliberate intent to wound the religious feelings of any person.**—Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places, any object

> in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

60. A careful perusal of the aforesaid provision would show that Section 298 of the IPC specifies that the following essential ingredients are necessary to constitute an offence: -

(1) that accused wounded religious feelings of person or persons

(2) that accused did so by uttering words or making any sound in hearing of that person (persons) or by making any gesture in the sight of that person or by placing any object in the sight of that person

(3) that the accused did so with deliberate intention.

61. It is quite clear that the wordings of Section 298 of the IPC relate to oral words uttered in presence of person and it has no application where the complaint relates to written article or tweet.

62. Patently, this provision does not apply to a written article where the editor of weekly wrote a scurrilous and defamatory article in the weekly "AASPASS" under the caption "why Acharya Rajnishji leaves Pune?". It was held by the Gujarat High Court that Section 298 of the IPC relates to oral words uttered in presence of person with the

intention of wounding his religious feelings, it has no application to a written article published in weekly. (See **Shalibhadra Shah and others v. Swami Krishna Bharati and others**[23].)

63. The essence of the offence under Section 298 of the IPC consists in the deliberate intention of wounding the religious feelings of others and mere knowledge of the likelihood that the religious feelings of others may be wounded is not sufficient to bring the act of the accused within the mischief of this provision.

64. In the matter of **Hulikal Nataraju v. State of Karnataka and K.H. Chetan**[24], it was alleged that complainant while watching television channel heard and saw petitioner accused uttering some words and in that case, it was not alleged that petitioner directly uttered any words to complainant offending him. It was held by the Karnataka High Court that it is not alleged that petitioner uttered words with deliberate intention of wounding religious feelings of complainant and it was further held that no offence under Section 298 of the IPC is made out.

65. Reverting to the facts of the present case, in the instant case, it is not alleged in the FIR that the petitioner has uttered any word or made any sound in presence of the complainant / respondent No.4 or

23 1981 Cri LJ 113
24 (2010) 4 AIR Kar R 508

made any gesture or sign in the sight of the complainant, therefore, offence under Section 298 of the IPC, prima facie, would not be made out against the petitioner herein. In fact, the petitioner is said to have made two tweets which are said to be against the then Prime Ministers of the country, but there is no allegation that he uttered any oral word in presence of respondent No.4 which is one of the essential ingredients for offence under Section 298 of the IPC. There is also no allegation that the petitioner wounded the religious feelings of any person including respondent No.4. As such, none of the ingredients for constituting the offence under Section 298 of the IPC is available against the petitioner. Therefore, taking the contents of the FIR as it is so far as the offence under Section 298 of the IPC is concerned, offence under Section 298 is not made out against the petitioner.

66. Other offences with which the petitioner is charged in FIR No.200/2020 are Sections 153A & 505(2) of the IPC. Sections 153A and 505(2) of the IPC are as follows: -

Section 153A of the IPC

> **"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, or

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc.—(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in

> the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

Section 505(2) of the IPC

> "(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."

67. Section 153A of the IPC makes any act which promotes enmity between the groups on grounds of religions and race etc. or which are prejudicial to national integration punishable. The purpose of enactment of such a provision was to "check fissiparous communal and separatist tendencies and secure fraternity so as to ensure the dignity of the individual and the unity of the nation". (See **Pravasi Bhalai Sangathan v. Union of India and others**[25].)

68. In the matter of **Bilal Ahmed Kaloo v. State of A.P.**[26], it was held by the Supreme Court that the common feature in both the sections viz. Sections 153A and 505(2), being promotion of feeling of

25 AIR 2014 SC 1591
26 (1997) 7 SCC 431

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. It was observed by their Lordships in paragraphs 10, 11 and 12 of the report as under: -

> "10. ... The common ingredient in both the offences is promoting feeling of enmity, hatred or ill will between different religious or racial or linguistic or regional groups or castes or communities. Section 153-A covers a case where a person by "words, either spoken or written, or by signs or by visible representations" promotes or attempts to promote such feeling. Under Section 505(2), promotion of such feelings should have been done by making and publishing or circulating any statement or report containing rumour or alarming news.
>
> 11. This Court has held in *Balwant Singh v. State of Punjab*[27] that mens rea is a necessary ingredient for the offence under Section 153-A. Mens rea is an equally necessary postulate for the offence under Section 505(2) also as could be discerned from the words "with intent to create or promote or which is likely to create or promote" as used in that sub-section.
>
> 12. The main distinction between the two offences is that while publication of the words or representation is not necessary under the former, such publication is sine qua non under Section 505. The words

27 (1995) 3 SCC 214

"whoever makes, publishes or circulates" used in the setting of Section 505(2) cannot be interpreted disjunctively but only as supplementary to each other. If it is construed disjunctively, any one who makes a statement falling within the meaning of Section 505 would, without publication or circulation, be liable to conviction. But the same is the effect with Section 153-A also and then that section would have been bad for redundancy. The intention of the legislature in providing two different sections on the same subject would have been to cover two different fields of similar colour. The fact that both sections were included as a package in the same amending enactment lends further support to the said construction."

69. The principle of law laid down in **Bilal Ahmed Kaloo** (supra) was followed thereafter by the Supreme Court in the matter of **Manzar Sayeed Khan v. State of Maharashtra and another**[28] and while dealing with the issue of promotion of enmity or hatred between different groups on grounds of religion, etc. i.e. essential ingredients of offence of Sections 153A & 505(2) of the IPC, it has been held by their Lordships that it is necessary that there should be at least two groups or communities involved and merely inciting the feeling of one community or group without reference to any other community or group cannot attract either Section 153A or Section 505 of the IPC, and it was observed in paragraph 16 as under: -

"16. Section 153-A IPC, as extracted

28 (2007) 5 SCC 1

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 tranquility. 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 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."

70. In **Amish Devgan** (supra), the Supreme Court has followed the principle of law laid down in **Manzar Sayeed Khan** (supra) and **Bilal Ahmed Kaloo** (supra) and held as under: -

"96. ... We would also hold that deliberate and malicious intent is necessary and can be gathered from the words itself—satisfying the test of top of *Clapham omnibus*, the who factor—person making the comment, the targeted and non-targeted group, the context and occasion factor—the time and circumstances in which the words or speech was made, the state of feeling between the two communities, etc. and the proximate nexus with the protected harm, to

cumulatively satiate the test of "hate speech". "Good faith" and "no legitimate purpose" test would apply, as they are important in considering the intent factor."

71. Thereafter, recently, the Supreme Court in the matter of **Patricia Mukhim v. State of Meghalaya and others**[29], while following the principle of law laid down in **Bilal Ahmed Kaloo** (supra), quashing the FIR registered against the petitioner therein for offences under Sections 153A & 505(1)(c) of the IPC; for Facebook post on violence against non-tribal people in the State, held that disapprobation of governmental inaction cannot be branded as an attempt to promote hatred between different communities. Their Lordships pertinently observed as under:-

"9. Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquility, the law needs to step in to prevent such an activity. The intention to cause disorder or incite people to violence is the *sine qua non* of the offence under Section 153 A IPC and the prosecution has to prove the existence of *mens rea* in order to succeed.

10. The gist of the offence under Section 153 A IPC is the intention to promote feelings of enmity or hatred between different classes of people. The intention has to be judged primarily by the language of the piece of writing and the circumstances in which it was written and published. The matter complained of within the ambit of Section 153A must be read as a whole. One cannot rely on strongly worded

29 2021 SCC OnLine SC 258

> 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."

Their Lordships finally concluded as under: -

> "13. ... At the most, the Facebook post can be understood to highlight the discrimination against nontribals in the State of Meghalaya. However, the Appellant made it clear that criminal elements have no community and immediate action has to be taken against persons who had indulged in the brutal attack on non-tribal youngsters playing basketball. The Facebook post read in its entirety pleads for equality of non-tribals in the State of Meghalaya. In our understanding, there was no intention on the part of the Appellant to promote class/ community hatred. As there is no attempt made by the Appellant to incite people belonging to a community to indulge in any violence, the basic ingredients of the offence under Sections 153 A and 505(1)(c) have not been made out. ...
>
> 15. ... Free speech of the citizens of this country cannot be stifled by implicating them in criminal cases, unless such speech has the tendency to affect public order. ..."

72. As such, from the aforesaid principles of law laid down by their Lordships of the Supreme Court in the above-stated judgments – **Bilal Ahmed Kaloo** (supra), **Manzar Sayeed Khan** (supra), **Patricia Mukhim** (supra) and **Amish Devgan** (supra), it is quite vivid that in order to attract the offences under Sections 153A & 505(2) of the IPC, the act of accused must be made with an intention to promote enmity between two groups on the ground of religion, race, place of

birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony and it must instigate the feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities and is likely to disturb the public tranquility.

73. At this stage, it would be appropriate to again notice the tweet made by the petitioner vide Annexure P-4 at the cost of repetition which has been made basis for registering the offences under Sections 153A & 505(2) of the IPC against him. The said tweet (Annexure P-4) is as follows: -

नेहरू और राजीव को भ्रष्ट कहने पे ..कांग्रेसियों ने complain किया है ..teacher से ..अभी तो और जलील होना बाकी है

नेहरू ने तो कश्मीर समस्या को भी जन्म दिया ..न होते नेहरू न होता कश्मीर समस्या

राजीव गांधी ने तो बोफ़ोर्स की चोरी की और 3000 सिखों का क़त्ल भी कराया

जाओ और कम्प्लेन करो

74. On the basis of the aforesaid tweet, respondent No.4 made a report to the police station against the petitioner which has been reduced into writing vide Annexure P-1 in which it has been stated by the complainant / respondent No.4 that the act of tweeting i.e. the above stated contents, on the social platform is not only prejudicial to the maintenance of harmony between different religious communities but is also likely to disturb the public tranquility. It has also been stated that

the said tweet has been made with an intention of wounding the religious sentiments of a particular religion. It has further been stated that there is also likelihood that the tweet may cause fear in the Sikh community and induce any person of that community to commit an offence against the State or against the public tranquility, and there is a strong likelihood that it may incite any class or community of person to commit any offence against any other class or community. It has been further alleged that there is strong likelihood that the tweet will give an opportunity to the extremists to disturb the integrity, communal harmony and peace within the country.

75. On a careful perusal of the aforesaid contents which have been levelled in the written report reproduced in the first information report (Annexure P-1), it is quite vivid that it is not the allegation that in the said tweet, two different religious, racial, language or regional groups or castes or communities are involved and as such there is no two different religious groups which is sine qua non for attracting offences under Sections 153A & 505(2) of the IPC and one of the essential and basic ingredients of the above-stated offences of involvement of two different groups is totally missing. In my considered view, there was no intention on the part of the petitioner herein

to promote class/community hatred and no attempt was made by the petitioner to incite the people belonging to a community to indulge in any violence and merely alleging inciting the feeling of one community or group without any reference to any other community or group would not attract either of the two penal provisions. The ingredients of offence under Sections 153A & 505(2) of the IPC do not appear to have been made out as required by their Lordships of the Supreme Court in paragraph 18 of the judgment in **Manzar Sayeed Khan** (supra) based upon their earlier decision in **Bilal Ahmed Kaloo** (supra) followed in the recent decisions in **Amish Devgan** (supra) and **Patricia Mukhim** (supra), that at least two groups or communities should be involved. As such, taking the contents of the FIR, respondent No.2 has only raised his apprehension that it is likely to disturb the public tranquility or peace or it is likely to cause fear in the particular community or it induced any community or committee in offence against the State or public tranquility and there are no two groups involved in the aforesaid contents of the FIR. Therefore, the basic ingredients of the offences under Sections 153A & 505(2) of the IPC are totally missing.

76. At this stage, it would be appropriate to notice the judgment of the Supreme Court cited by Mr. Sunil Otwani, learned Additional Advocate General,

in **Shri P.P. Sharma's** case (supra) in which the Supreme Court has held that mere allegation of mala fide against the informant and investigating officer cannot be the basis for quashing FIR and proceeding. As such, this judgment is in no way helpful to the State. Similarly, reliance placed in **Raj Singh's** case (supra) is also not helpful to the State / respondents and the same is clearly distinguishable to the facts of the present case, as it has been held by the Supreme Court that power of police to investigate into cognizable offence is not controlled by Section 195 of the CrPC.

77. As such, in the considered opinion of this Court, applying the parameters for quashing FIR laid down by the Supreme Court in **Bhajan Lal's** case (supra) followed in subsequent decisions, taking the contents of the FIR as it is, no offence under Sections 298, 153A & 505(2) of the IPC is made out against the petitioner. Accordingly, FIR No.200/2020 (**Annexure P-1**) registered against petitioner Dr. Sambit Patra at Police Station Civil Lines, Raipur on 11-5-2020 at 7.31 p.m. for the offences punishable under Sections 153A, 298 & 505(2) of the IPC also deserves to be and is hereby quashed.

W.P.(Cr.)No.279/2020: -

78. In this case, petitioner Tajinder Pal Singh Bagga has been charged for the offences punishable under

Sections 153A, 505 of the IPC and Section 66 of the Information Technology Act, 2000. The allegation against the petitioner is that on the basis of the tweet made by the petitioner in W.P.(Cr.) No.251/2020, he made the following tweet in his twitter handle vide **Annexure P-2**:

> "I don't agree with @sambitswaraj Ji, He said Rajiv Gandhi killed 3000 people. I want to say it's just official figure, unofficial figure is more than 5000. Rajiv Gandhi is Murderer."

79. The allegation is confined to the then Prime Minister late Shri Rajiv Gandhi. Facts of this case are similar to that of W.P.(Cr.)No.251/2020 and the tweet made by this petitioner is identical to that of the tweet made by petitioner Dr. Sambit Patra except the number of persons. Since the issue has already been examined in this attached writ petition, for the reasons mentioned in the preceding paragraphs (paragraphs 66 to 76) in respect of W.P.(Cr.)No.251/2020, I am of the opinion that no offence under Sections 153A & 505 of the IPC is made out against petitioner Tajinder Pal Singh Bagga.

80. The petitioner has also been charged for the offence punishable under Section 66 of the IT Act which states as under: -

> "**66. Computer related offences.**—If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall

be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.

Explanation.—For the purposes of this section,—

(a) the word "dishonestly" shall have the meaning assigned to it in section 24 of the Indian Penal Code (45 of 1860);

(b) the word "fraudulently" shall have the meaning assigned to it in section 25 of the Indian Penal Code (45 of 1860).”

81. Section 43 of the IT Act provides penalty for damage caused to any computer, computer network, by introduction of computer virus, unauthorised access, and other types of mischief. If any person is found guilty of contravening Section 43 of the IT Act, he is liable to pay damages by way of compensation to the person so affected. This provision relates to civil liability. It is pertinent to mention here that all the acts listed in Section 43 are purely related to the acts committed upon a computer system such as unauthorised access to files, alteration of the files, unauthorised procurement of files, injecting computer viruses, etc.. None of the acts laid down in the said provision pertains to the act, as the present petitioner herein has only made a tweet from his tweeter handle and other allegations against the petitioner is causing disharmony under Sections 153A & 505 of the IPC. There is no

allegation in the FIR / complaint, of violating any of the clauses mentioned in Section 43 of the IT Act. Therefore, ingredients of offence under Section 66 of the IT Act against the petitioner are totally missing, rather it is wrongly registered against the petitioner and it deserves to be quashed in exercise of power under Article 226 of the Constitution of India. Accordingly, FIR No.102/2020 (Annexure P-1) registered against the petitioner at Police Station Bhanupratappur, District Kanker on 24-5-2020 for the offences punishable under Sections 153A, 505 of the IPC and Section 66 of the IT Act is quashed.

82. As a fallout and consequence of the aforesaid discussion, both the writ petitions being W.P.(Cr.) Nos.251/2020 & 279/2020 are allowed in following terms: -

1. **FIR No.192/2020** (Annexure P-2) registered against petitioner Dr. Sambit Patra at Police Station Bhilai Nagar, Distt. Durg on 11-5-2020 at 7.29 p.m. for the offences punishable under Sections 499, 500, 501 & 505(1) of the IPC and consequent proceedings are hereby quashed. Similarly, **FIR No.200/2020** (Annexure P-1) registered against him at Police Station Civil Lines, Raipur on 11-5-2020 at 7.31 p.m. for the offences punishable under Sections 153A, 298 & 505(2) of the IPC and consequent proceedings

are also hereby quashed.

2. **FIR No.102/2020** (Annexure P-1) registered against petitioner Tajinder Pal Singh Bagga at Police Station Bhanupratappur, Distt. Kanker on 24-5-2020 for the offences punishable under Sections 153A, 505 of the IPC and Section 66 of the IT Act and consequent proceedings are hereby quashed.

83. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.251 of 2020

Dr. Sambit Patra

Versus

State of Chhattisgarh and others

AND

Writ Petition (Cr.) No.279 of 2020

Tajinder Pal Singh Bagga

Versus

State of Chhattisgarh and others

Head Note

The police officer cannot investigate non-cognizable offences under Sections 500 and 501 of the IPC without the leave of the Court.

न्यायालय की अनुमति के बिना, पुलिस अधिकारी भारतीय दंड संहिता की धारा 500 तथा 501 के तहत असंज्ञेय अपराधों की जॉच नहीं कर सकता है।