



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 228 of 2020

Order Reserved on : 12.07.2021

Order Delivered on : 18.08.2021

Vishwadini Pandey, W/o Kirti Pandey, Aged About 43 Years, R/o Anand Vihar Colony, Mowa Raipur, District- Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Home, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District- Raipur (C.G.)
2. Superintendent of Police, Raipur, District- Raipur (C.G.)
3. Station House Officer, Civil Lines, Raipur, District- Raipur (C.G.)
4. Shahid Siddqui, S/o Vali Mohammad Siddqui, Aged About 40 Years, R/o Hirapur, Raipur, District- Raipur (C.G.)

---- Respondents

For Petitioner	:	Mr. Sumit Singh, Advocate.
For State/Res. 1 to 3	:	Mr. Devendra Pratap Singh, Dy. A.G.
For Respondent No. 4	:	Mr. Ashutosh Mishra, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Order

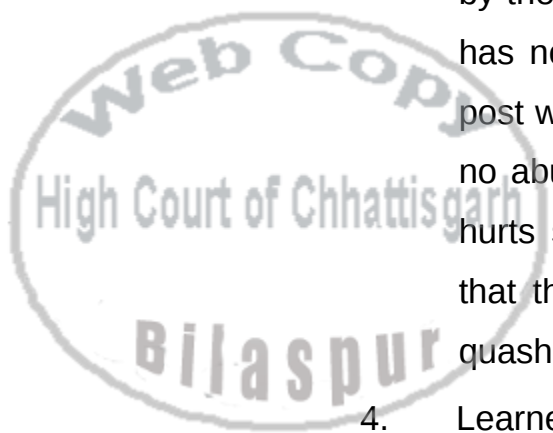
1. The petitioner has filed this writ petition under Article 226 of the Constitution of India challenging registration of FIR No. 0171 dated 15.04.2020 (Annexure P/3) registered against her at Police Station – Civil Lines, Raipur (C.G.) for committing offence punishable under Sections 153-A, 295-A, 505 (2) & 188 of I.P.C.
2. The brief facts as projected by the petitioner are that the petitioner is a practicing lawyer at Raipur. Respondent No. 4 lodged an FIR against the petitioner on 15.04.2020 alleging that the petitioner in her Facebook ID, posted objectionable material on 4th, 5th & 7th April, 2020 because of which, religious sentiments of complainant/ respondent No. 4 have been hurt.



Therefore, respondent No. 4 has got registered FIR No. 171/2020 against the petitioner for committing offence punishable under Sections 153-A, 295-A, 505 (2) & 188 of I.P.C.

3. Learned counsel for the petitioner would submit that the petitioner had filed a written complaint on 11.05.2019 at Police Station- Pandri, District- Raipur (C.G.) against one Nand Kumar Baghel, who is father of present Hon'ble the Chief Minister of the State alleging that Nand Kumar Baghel has used derogatory remark against Lord Shri Ram and also abused Lord Ganesha, therefore, FIR has been lodged by respondent No. 4 against the petitioner with ulterior motive adopting pressure tactics as counter blast to take vengeance by the respondent. He would further submit that the petitioner has not written the original post, she had simply shared the post written by one Rudra Anish. He would further submit that no abusive language has been used by the petitioner, which hurts sentiments of any of the religious, hence, it is prayed that the FIR registered against the petitioner may kindly be quashed.

4. Learned State counsel has filed their return, in which, they have contended that since the complaint discloses the *prima facie* commission of cognizable offence by the petitioner, the authorities are duty bound to register FIR against the petitioner. During investigation, the police recorded statement of complainant/ respondent No. 4 as well as the witnesses namely Saiyyad Sidique Ali, Shahid Iqbal, Mohd. Sajid Khan & Ashraf Khan. He would submit that the Police has written a letter to Cyber Cell for providing information regarding authenticity of the Facebook profile of the petitioner. The Cyber Cell has contacted the Facebook company, who informed that as per law of United States of America, the document of Mutual Legal Assistance Treaty Request or letter rogatory is necessary for providing the information, but the same has not been provided to them by Facebook Company.





5. Learned State counsel would further submit that the petitioner has not provided certificate under Section 65 (B) of the Indian Evidence Act. The petitioner is not assisting in the investigation, which is under progress and it is in primary stage. Looking to the allegation made against the petitioner, present is not a fit case, where extraordinary jurisdiction may be exercised by this Court under Article 226 of the Constitution of India. Hence, it is prayed that this writ petition may kindly be dismissed.
6. Learned counsel for respondent No. 4 has also filed return, in which, it has been stated that the petitioner has not only deliberately made objectionable post, which hurts sentiments of the communities at large. The petitioner has not only used such material on her status, but she has tagged it with several other persons as well, which amounts to promotion of such illegal activity and it is constituting an offence under the aforesaid Sections. Therefore, the offence alleged in the FIR is made out against the petitioner. The FIR registered against the petitioner is made out on the basis of complaint made by respondent No. 4 and the investigation is under progress and it is in primary stage, which cannot be quashed at this juncture. Hence, it is prayed that this writ petition filed by the petitioner may kindly be dismissed. The learned counsel for respondent No. 4, in support of his arguments, relied upon the judgment of Hon'ble the Supreme Court in **Amish Devgan Vs. Union of India & others**¹.
7. I have heard learned counsel for the parties, perused the documents placed on record with utmost satisfaction.
8. Learned counsel for the petitioner would submit that from bare perusal of the FIR, no offence under Sections 153-A, 295-A, 505 (2) & 188 of I.P.C. is made out against the petitioner. He would further submit that during Covid-19 pandemic in the month of March, 2020, there was rumor that spread of Covid is due to conduct of Jamaat Tabligh. They are assembling and

¹ (2021) 1 SCC 1



spreading infection and other harmful things. Hon'ble the Supreme Court took cognizance of the same and gave specific direction to Police with regard to take action on account of assembling of Jamaat Tabligh, as such, Police conducted raid in various locations like Maharashtra, Chhattisgarh etc. It was published in various news channels, media, newspapers and on the basis of publication of news, the petitioner has shared the post of Rudra Anish and it was not the original written post of the petitioner. The petitioner has no intention to hurt any religious sentiment and she has just shared the post which was already in the public domain. It was not to hurt sentiment of any particular community. In support of his contention, learned counsel for the petitioner would rely upon the judgment of Hon'ble the Supreme Court reported in (2019) 12 SCC 432, (2017) 7 SCC 760 & AIR 1957 SC 620. He also referred to the judgment rendered by Hon'ble the Supreme Court in **Kedar Nath Singh Vs. State of Bihar**², **Fiona Shrikhande Vs. State of Maharashtra & another**³, **Ashok Chaturvedi & others Vs. Shitul H. Chanchani & another**⁴ & **State of Haryana & others Vs. Bhajan Lal Others**⁵. He also placed reliance on the judgment passed by Coordinate Bench of this Court in **Dr. Apurva Ghiya Vs. State of Chhattisgarh**⁶ & **Dr. Sambit Patra Vs. State of Chhattisgarh & others**⁷.

9. Before advertng to the facts of the case it is necessary to extract contents of the FIR, which is as under:-

“मैं हीरापुर रायपुर का रहने वाला हूँ। रायपुर कोर्ट में वकालत करता हूँ। सुश्री विश्वदीनी पाण्डे के द्वारा अपने फेसबुक आई.डी. Facebook ID-<https://www.Facebook.com/viswadini.pandey> के माध्यम से फेसबुक पर दिनांक-04 अप्रैल, 05 अप्रैल एवं 07 अप्रैल 2020 को आपत्तिजनक पोस्ट प्रकाशित किया गया

² AIR 1962 SC 955

³ (2013) 14 SCC 44

⁴ (1998) 7 SCC 698

⁵ 1992 Supp. (1) SCC 35

⁶ WP (Cr.) No. 310 of 2020 (decided on 07.10.2020)

⁷ WP (Cr.) No. 251 of 2020 (decided on 12.04.2021)



है। जिसके द्वारा दो धार्मिक वर्गों के बीच एवं समाज के विभिन्न समुदायों के बीच आपसी वैमनस्य, द्वेष, घृणा फैलाना है। उनके इन पोस्टों से मेरी धार्मिक भावनाएँ आहत हुई हैं एवं मैं व्यथित तथा क्षुब्ध हुआ हूँ। शासन द्वारा जारी कोविड-19 के आदेशों का अवहेलना करते हुये उनके द्वारा झूठे तथ्य एवं अफवाहों को प्रसारित किया गया है। इस संबंध में मैं लिखित आवेदन पेश कर रहा हूँ। कार्यवाही की जाये। आवेदन पत्र एवं उसके साथ संलग्न सपत्रों के अवलोकन से सुश्री विश्वदीनी पाण्डे के द्वारा अपने फेसबुक एकाउंट से किये गये पोस्टों के आधार पर प्रथम दृष्टया धारा 153(क), 295(क), 502(2), 188 भादवि का अपराध घटित करना पाये जाने से अपराध पंजीबद्ध कर विवेचना में लिया गया। नकल आवेदन जैल है। प्रति श्रीमान थाना प्रभारी महोदय, सिविल लाईन रायपुर, छ.ग. विषय फेसबुक यूजर विश्वदनी पाण्डे (फेसबुक आई.डी. Facebook ID-<https://www.Facebook.com/viswadini.pandey>) के द्वारा फेसबुक पर आपत्तिजनक पोस्ट प्रकाशित किये जाने के आधार पर उनके विरुद्ध प्रथम सूचना पत्र दर्ज कर वैधानिक कार्यवाही करने बाबत। महोदय, आवेदक/शिकायतकर्ता द्वारा निम्नानुसार शिकायत प्रस्तुत है:- 1. यह कि विश्वदनी पाण्डे के द्वारा फेसबुक में निम्नानुसार आपत्तिजनक पोस्ट प्रकाशित की गई है दिनांक-04/04/2020 को सोचिये जरा ये नर्सों के आगे नंगे घूम रहे हैं, वे इस्लाम के प्रचारक धर्मगुरु हैं। जहाँ रहनुमा ऐसे हैं तो आवाम कैसी होगी। दिनांक-05/04/2020 को तब्लीगीयों को अपनी बेटी ब्याहने और उनके थूक, गु साफ करने को आतुर कांगी दिनांक-07/04/2020 को हाल ही में देखी गई जमाती थूके, हगे या संक्रमण फैलाए इनको गले लगाईये, इनके खिलाफ बोलने पर हो रही है गिरफ्तारी। ऐसे पोस्ट समाज धर्म विशेष के विरुद्ध ऐसी आपात स्थिति देश एवं प्रदेश में संप्रदायिक अफवाह एवं कोविड-19 के संबंध में झूठे अफवाहों को प्रसारित/पोस्ट किया गया है। जिसकी प्रति इस शिकायत पत्र के साथ संलग्न है। 2. यह कि, उक्त पोस्ट से स्पष्ट है कि उसे करने वाले का मकसद समाज के विभिन्न समुदायों के बीच आपसी वैमनस्य, द्वेष, घृणा फैलाना है साथ ही उक्त कथन को व्यवस्था पर प्रतिकूल प्रभाव डालने वाला तथा लोक प्रशांती में विघ्न डालने वाला है जो दंडनीय अपराधिकृत्य है। 3. यह कि, विश्वदनी पाण्डे ने अपने Facebook ID-<https://www.Facebook.com/viswadini.pandey> पर समाज धर्म विशेष के विरुद्ध ऐसी आपात स्थिति देश एवं प्रदेश में संप्रदायिक अफवाह एवं कोविड-19 के संबंध में झूठ अफवाहों को प्रसारित /पोस्ट किया गया है। जो कि





अपराधिक कृत्य है। 4. यह कि, उक्त व्यक्ति द्वारा किसी धर्म विशेष व उसके मानने वाले लोगों को विशेषकर टारगेट कर उसके खिलाफ अपशब्द और गलत बातें अपने फेसबुक एकाउंट से प्रसारित की जा रही है जिससे समाज में दो धर्मों के बीच वैमनस्ता उत्पन्न होने का खतरा बन गया है और आपदा के इस दौर में कानून व्यवस्था को भी आघात का खतरा उत्पन्न हो गया है। 5. यह कि, उक्त व्यक्ति द्वारा जो पोस्ट की गई है उससे मेरी धार्मिक भावनाएँ आहत हुई हैं जिससे मैं व्यथित एवं क्षुब्ध हूँ। उक्त व्यक्ति द्वारा उक्त पोस्ट जानबूझकर मेरे धार्मिक विश्वासों के प्रति अपमान कारित करने के उद्देश्य से की गई है। अतः महोदय से न्यायहित में निवेदन है कि, उपरोक्त अताताई द्वारा की गई आपत्तिजनक पोस्ट से मेरी धार्मिक भावनाएँ आहत किये जाने से उक्त फेसबुक यूजर के विरुद्ध रिपोर्ट दर्ज कर वैधानिक कार्यवाही किये जाने का कष्ट करें।”

10. The FIR has been registered against the petitioner for committing offence punishable under Sections 153-A, 295-A, 505 (2) & 188 of I.P.C. The aforesaid Sections are extracted below:-

“[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, 2[or] 2[(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 subsection (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.]

[295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.—

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [citizens of India], [by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to 4[three years], or with fine, or with both.]

188. Disobedience to order duly promulgated by public servant.—

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.





Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.”

11. To establish the offence under Sections 153-A of I.P.C. the contents of the FIR should, prima facie, reflect that the offender should intent to promote feelings of enmity or hatred between different class of people and the intention to cause this order or incite the people to commit violence, is the necessary ingredients of offence under Section 153-A of I.P.C. and the contents of the FIR should, prima facie, prove the existence of mensrea on the part of the accused Similarly for prima facie establishing the offence, the promotion of feelings of enmity, hatred or ill-will “between different” religious, racial linguistic or regional groups or castes or communities should be done. It is necessary that atleast two such groups or communities should be involved. From the perusal of the provisions of Sections 153-A & 505 (2) of I.P.C., both the Sections have common features and merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of two Sections. The contents of the FIR is silent on this count.
12. Hon'ble the Supreme Court in **Manzar Sayeed Khan Vs. State of Maharashtra & another**⁸, examined the provisions of offence alleged to have been committed under Sections 153-A & 505 (2) of I.P.C. with regard to writing of books by the petitioner. Hon'ble the Supreme Court after elaborate discussion with regard to the provision of Sections 153-A & 505 (2) of I.P.C. has held as under:-

“15. We have given our thoughtful consideration to the respective contentions of the learned counsel for the parties. The question to be decided now is whether the paragraph complained of would attract the penal consequences envisaged in Section 153A of IPC. Section 153A of IPC was amended by the

⁸ (2007) 5 SCC 1



Criminal Law (Amendment) Act, 1969 (Act 35 of 1969). It consists of three clauses of which clauses (a) and (b) alone are material for the case on hand, which read as under:

"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 tranquility, or

(c) * * *

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

16. Section 153-A of IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public 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 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 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.

17. In *Ramesh Chotalal Dalal v. Union of India & Others* [AIR 1988 SC 775], 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".

18. Again in *Bilal Ahmed Kaloo v. State of A.P.* [(1997) 7 SCC 431], 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 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.

19. Prof. James W. Laine, the author of the book, has exercised his reason and his own analytical skills before choosing any literature which he intends to include in his book. Even if the appellant-Manzer Sayeed Khan, a constituted Attorney of the Oxford University Press, India and the appellant-Vinod Hansraj Goyal, Proprietor of the Rashtriya Printing Press, Shahdara, Delhi, or the persons whose names are mentioned in the acknowledgement by the author, have provided information for the purpose, including the said paragraph in the book, it is important and worth observing that the author has mentioned that BORI, Pune has been his scholarly home in India and many people therein helped him for collecting the material. The author has given the names of many persons, who had helped him in one way or the other and enlightened him about the history of the historical hero 'Shivaji'. The author has also mentioned in the book about the International





Conference on Maharashtra, etc., which has given him a lot of material for inclusion in his book. As it appears from the records, BORI, Pune was established almost 90 years back and it has a great tradition of scholarly work. It is very improbable to imagine that any serious and intense scholar will attempt to malign the image of this glorious Institute. The author thought his work to be worth of dedication to his mother Marie Whitwell Laine, which was purely a scholarly pursuit and without any intention or motive to involve himself in trouble. It is the sole responsibility of the State to make positive efforts to resolve every possible conflict between any of the communities, castes or religions within the State and try every possible way to establish peace and harmony within the State under every and all circumstances. ”

13. Section 295-A of I.P.C. does not provide everything to be penalized. It penalized only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Insults to religion offered unwillingly or carelessly or without any deliberate of malicious intention to outrage the religious feelings of that class do not come within this Section. Hon'ble the Supreme Court in **Mahendra Singh Dhoni Vs. Yerraguntla Shyamsundar & another**⁹, held as under:-

“6. On a perusal of the aforesaid passages, it is clear as crystal that Section 295-A does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of a class of citizens. It penalises only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. The Constitution Bench has further clarified that the said provision only punishes the

⁹ (2017) 7 SCC 760



aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Emphasis has been laid on the calculated tendency of the said aggravated form of insult and also to disrupt the public order to invite the penalty.”

14. From bare perusal of contents of the post, which according to the petitioner, is shared by her written by one of Rudra Anish, hence it was not the original written post by the petitioner. The post is as under:-

“सोचिये जरा ये नर्सों के आगे नंगे घुम रहे है, वे इस्लाम के प्रचारक धर्म गुरु है। जहां रहनूमा ऐसे है तो आवाम कैसे होगी”

The post of the petitioner dated 05.04.2020 is extracted below:-

“तबलियों को अपनी बेटी ब्याहने और उनके थूक, गु साफ करने को आतुर कांगी”

Further, post dated 07.04.2020 off the petitioner is extracted below:-

“हाल ही में देखी गई जमाती थूकें, हगे या संक्रमण फैलाये, इनके खिलाफ बोलने पर हो रही है गिरफ्तारी”

15. From perusal of the posts and contents of the Sections 153-A, 505(2), it is quite clear that no comparison between two communities or groups, has been done by the petitioner with intent to promotion of feelings of enmity, hatred or ill will between different religious has been committed by the petitioner, therefore, offence, prima facie, under Section 153-A, 505 (2) of I.P.C. has not been made out against the petitioner.
16. The Coordinate Bench of this Court after considering the law laid down by Hon'ble the Supreme Court in **Ramji Lal Modi Vs. State of U.P.**¹⁰, **Mahendra Singh Dhoni Vs. Yerraguntla Shyamsundar & another**¹¹ and **Priya Prakash Varrier & others Vs. State of Telangana & another**¹², decided the issues with regard to registration of FIR for committing an offence under Section 295-A of I.P.C.

¹⁰ AIR 1957 SC 620

¹¹ (2017) 7 SCC 760

¹² (2019) 12 SCC 432





17. From perusal for the FIR, it is crystal clear that the said post is already in public domain and lot of news channels were also broadcasting the same. The petitioner has filed rejoinder to the petition wherein she has specifically contended that as soon as she received notice from Police Station Incharge-Civil Lines Raipur, she had submitted reply on 08.05.2020 wherein she clearly mentioned that the said post has been written on the basis of information available in various news channels and she has no criminal intention to hurt the religious sentiment of any community. Therefore, it cannot be held that the petitioner had intention to commit an offence under Section 295-A of the I.P.C.
18. Learned counsel for the petitioner would submit that the offence under Section 188 of I.P.C. registered against the petitioner is contrary to the procedure as defined under Section 195 of the Cr.P.C., therefore, the offence under Section 188 is, prima facie, illegal. He would further refer to the judgment passed by Coordinate Bench of this Court in case of **Dr. Apurva Ghiya Vs. State of Chhattisgarh & others**¹³, which has held as under:-

“14. A careful perusal of Section 195 (1) of the Cr.P.C. would show that the general rule is that any person having knowledge may set the law in motion by making a complaint, even though he is not the person interested in or assisted by the offence to the general rule. Section 195 of the Code provides an exception and forbids cognizance having been taken of the offence referred to therein except on the complaint in writing by the court or by some other court to which such court is subordinate. [See Lalji Haridas Vs. The State of Maharashtra & others (AIR 1964 SC 1154)]”

19. On the other hand, learned counsel for respondent No. 4 would submit that the FIR has rightly been registered against the petitioner and he would rely upon the judgment of Hon'ble the Supreme Court in **Amish Devgan (Supra)**, in which, it has been held as under:-

¹³ WP (Cr.) No. 310 of 2020 decided on 07.10.2020



“99. Section 295-A and clause (2) of Section 505 of the Penal Code reads as under:

“295-A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.— Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

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505. Statements conducing to public mischief.— * * * (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.”

100. The two provisions have been interpreted earlier in a number of cases including *Ramji Lal Modi AIR 1957 SC 620*, *Kedar Nath AIR 1962 SC 955*, *Bilal Ahmed Kaloo (1997) 7 SCC 431*. It could be correct to say that Section 295A of the Penal Code encapsulates of all three elements, namely, it refers to the content-based element when it refers to words either spoken or written, or by signs or visible representation or otherwise. However, it does not on the basis of content alone makes a person guilty of the offence. The first portion refers to deliberate and malicious intent on the part of the maker to outrage religious feeling of any class of citizens of India. The last portion of Section 295A refers to the harm-based element, that is, insult or attempt to insult religions or religious belief of that class. Similarly, sub- section (2) to Section 505 refers to a person making publishing or circulating any statement or report containing rumour or alarming news. Thereafter, it refers to the intent





of the person which should be to create or promote and then refers to the harm-based element, that is, likely to create or promote on the ground of religion, race, place of birth, residence, language, cast, etc., feeling of enmity, hatred or ill-will between different religions, racial language, religious groups or castes or communities, etc.

101. In *Bilal Ahmad Kaloo*, this Court had drawn a distinction between sub-section (2) to Section 505 and clause (a) to Section 153A of the Penal Code observing that publication is not necessary in the latter while it is sine qua non under clause (2) of Section 505. Clause (2) of Section 505 of the Penal Code cannot be interpreted disjunctively and the words 'whosoever makes, publishes or circulates' are supplemented to each other. The intention of the legislature in providing two different sections of the same subject vide single amending act would show that they cover two different fields of same colour.

102. Clauses (a) and (b) to sub-section (1) to Section 153A of the Penal Code use the words 'promotes' and 'likely' respectively. Similarly, Section 295-A uses the word 'attempts' and sub-section (2) to Section 505 uses the words 'create or promote'. Word 'likely' as explained above, in our opinion, convey the meaning, that the chance of the event occurring should be real and not fanciful or remote (*Tillmanns Butcheries Pty Ltd. v. Australasian Meat Industry Employees' Union*¹¹⁵). The standard of 'not improbable' is too weak and cannot be applied as it would infringe upon and fall foul of reasonable restriction and the test of proportionality. This is the mandate flowing from the catena of judgments of the Constitutional Benches which we have referred to earlier and also the decision in *Shreya Singhal* drawing distinction between advocacy, discussion and incitement and that only the latter, i.e. the incitement, is punishable whereas the former two would fall within the domain of freedom to express and convey one's thoughts and ideas."

20. The judgment cited by respondent No. 4 would also indicate that for falling any words within the purview of offence under Section 153-A, 295-A & 505(2) of I.P.C., the words spoken or written, if incite other community than only it is punishable and if the speaker of the words does not actively incite the descent into public disorder and is merely pointed out insulting person





or group is behaving in a particular manner, which may not amount to promotion and does not fall within the ambit of offence. From the above discussion, considering the law on this subject and considering the facts of the case that the petitioner has shared the post of other person, even, contents of the FIR does not, prima facie, establish the alleged offences mentioned in the FIR, therefore, the FIR is liable to be quashed.

21. Hon'ble the Supreme in **State of Haryana & others Vs. Bhajan Lal & others**¹⁴, has held 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 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.

¹⁴ 1992 Supp. (1) SCC 335





(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.”

22. From the above discussion and the aforesaid law laid down by Hon'ble the Supreme Court in **Bhajan Lal (Supra)**, contents of the FIR fall within ambit of Clause (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.
23. In view of the above, the FIR registered against the petitioner is liable to be and is hereby quashed.
24. Accordingly, the instant writ petition is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge