IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

CRIMINAL PETITION NO. 2845 OF 2023 (482(Cr.PC) / 528(BNSS)
C/W
CRIMINAL PETITION NO. 2064 OF 2023 (482(Cr.PC) / 528(BNSS)

IN CRL.P No. 2845/2023

BETWEEN:

1. MS. NAIMA AKTHAR NAGARIA
AGED 20 YEARS,
D/O AKHTAR ABDEAALI NAGARIA
NO.3/4, LADY CURZON ROAD,
SHIVAJINAGAR,
BENGALURU NORTH, NEAR BOWRING HOSPITAL,
BENGALURU,
KARNATAKA - 560 001.

2. MR.RISHAB JAIN
AGED 20 YEARS,
S/O JAYANATILAL JAIN,
R/O NO.385, BANASHANKARI 1ST STAGE,
5TH MAIN, 2ND CROSS,
HANUMANTHANAGARA,
BENGALURU-560050.

3. MR.AARYA SHARMA
AGED 20 YEARS,
S/O ANANT SHARMA,
R/O NO.A-0, SHAKTHI CORNER APARTMENT,
5TH MAIN, 8TH CROSS, MALLESHAPALYA,
BENGALURU-560075.

4. MR.SUJAL B S
AGED 20 YEARS,
S/O SUNIL B.NAGARAJ
R/O NO.25, SUDHA SUKRITHI
2ND FLOOR, FLAT NO.201,
2ND MAIN ROAD, TATA SILK FARM,
BASAVANAGUDI, BENGALURU-560 001.

5. MR.PRANAV PALLIYIL
AGED 20 YEARS,
S/O VIJAYAKRISHNA N.PLAKKAT,
R/O NO.4004, SOBHA DAFFODIL,
27TH MAIN, SECTOR 2 HSR LAYOUT,
BENGALURU-560102.

6. MR.AASHISH V AGARWAL
AGED 21 YEARS,
VASUDEV AGARWAL,
NO.1121, PRESTIGE WEST WOODS,
GOPALPURA, BINNI PETTE, MAGADI ROAD,
NEAR KSR METRO STATION,
BENGALURU-560023.

7. MS.SMRITHI R.B.
AGED 21 YEARS,
D/O RAMADURGAM SRINIVASULU BALAJI,
NO.517/35, 41ST CROSS,
1ST MAIN, OPP. VIJAYA BANK,
8TH BLOCK, JAYANAGAR,
VTC, BENGALURU P.O.,
BANASHANKARI IIND STAGE,
BENGALURU
KARNATAKA - 560 070.

…PETITIONERS

(BY SRI. S.SRIRANGA, SENIOR COUNSEL APPEARING FOR
SMT.SUMANA NAGANAND, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY ITS SIDDAPURA POLICE STATION,
JAYANAGAR, BENGALLURU-560 001
REPRESENTED BY SPECIAL PUBLIC PROSECUTOR,
HIGH COURT BUILDING.

2. MADHU SUDHANA K.N.
ASSISTANT DIRECTOR (GRADE-I)
SOCIAL WELFARE DEPARTMENT,
BENGALURU SOUHT, BANASHANKARI,
BENGALURU-560050.

…RESPONDENTS

(BY SMT. RASHMI JADHAV, ADDL.SP FOR R1
R2 SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 CR.P.C PRAYING TO QUASH THE FIR NO.32/2023, DATED 10.02.2023 (ANNEXURE-A) LODGED BY THE 1st RESPONDENT (SIDDAPURA POLICE STATION) AND COMPLIANT DATED 10.02.2023 (ANNEXURE-B) FILED BY THE 2nd RESPONDENT AS AGAINST THE PETITIONERS HEREIN AND ETC.

IN CRL.P NO. 2064/2023

BETWEEN:

1. SRI DINESH NILKANT BORKAR
S/O NILKANT M BORKAR,
AGED ABOUT 56 YEARS,
DIRECTOR, CENTER FOR MANAGEMENT STUDIES
JAIN (DEEMED TO BE UNIVERSITY)
133, LALBAGH ROAD,
BENGALURU-560027

2. SRI PRATEEK THOKDAR P
S/O N PRAVIN KUMAR
AGED ABOUT 29 YEARS
ASSISTANT PROFESSOR,
COMMERCE DEPARTMENT,
JAIN (DEEMED TO BE UNIVERSITY),
NO. 44/4, DISTRICT FUND ROAD,
JAYANAGAR 9TH BLOCK,
BENGALURU-560069

...PETITIONERS

(BY SRI. S.SRIRANGA, SENIOR COUNSEL APPEARING FOR
SMT.SUMANA NAGANAND, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY ITS SIDDAPURA POLICE STATION,
JAYANAGAR, BENGALURU- 560001
REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR,
HIGH COURT BUILDING.

2. MADHU SUDHANA K N
ASSISTANT DIRCTOR (GRADE-I)
SOCIAL WELFARE DEPARTMENT,
BENGALURU SOUTH, BANASHANKARI,
BENGALURU - 560050

...RESPONDENTS

(BY SMT. RASHMI JADHAV, ADDL.SP FOR R1
R2 SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 CR.P.C PRAYING TO QUASH THE FIR DATED 10.02.2023 (ANNEXURE-A) LODGED BY THE 1st RESPONDENT (SIDDAPURA POLICE STATION) AND COMPLIANT DATED 10.02.2023 (ANNEXURE B) FILED BY THE 2nd RESPONDENT AS AGAINST THE PETITIONERS HEREIN AND ETC.

THESE PETITIONS, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In Crl.P.No.2845/2023, petitioners have sought for the following reliefs:-

> *" 1. Call for records pertaining to Crime No. 32/2023 pending on the files of LXX City Civil & Sessions Judge, Bengaluru (CCH71);*
>
> *2. Quash the First Information Report No. 32/2023 dated: 10.02.2023 (Annexure-A) lodged by the 1st Respondent (Siddapura Police Station) and Complaint dated: 10.02.2023 (Annexure-B) filed by the 2nd Respondent as against the Petitioners herein;*
>
> *3. Consequently, quash FIR No.32/2023 pending on the filed of LXX City Civil & Sessions Judge, Bengaluru (CCH71), Bengaluru as against the Petitioners herein under Sections 3(1)(r), 3(1) (s) and 3(1) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 153A, 149 and 295A of Indian Penal Code, 1860; and*

4. Grant such other reliefs that this Hon'ble Court may deem fit in the interest of justice."

In Crl.P.No.2064/2023, petitioners have sought for the following reliefs:-

" 1. Call for records pertaining to Crime No. 32/2023 pending on the files of LXX Additional City Civil & Sessions Judge, and Special Judge At Bengaluru (CCH71);

2. Quash the First Information Report dated: 10.02.2023 (Annexure-A) lodged by the 1st Respondent (Siddapura Police Station) and Complaint dated: 10.02.2023 (Annexure-B) filed by the 2nd Respondent as against the Petitioners herein;

3. Consequently, quash Crime No..32/2023 pending on the filed of LXX Additional City Civil & Sessions Judge, Bengaluru (CCH71), Bengaluru as against the Petitioners herein under Sections 3(1)(r) 3(1) (s) and 3(1)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 153A, 149 and 295A of Indian Penal Code, 1860; and

4. Grant such other reliefs that this Hon'ble Court may deem fit in the interest of justice."

2. Heard learned Senior counsel for the petitioners and learned Addl.SPP for 1st respondent-State. Though notice of this

petition has been served upon the 2nd respondent, he has chosen to remain absent and unrepresented.

3. A perusal of the material on record will indicate that the petitioners-accused 2 and 3 in Crl.P.No.2064/2023 are faculty members of Jain Centre of Management Studies (Deemed University) while the petitioners-accused 4 to 10 in Crl.P.No.2845/2023 are students of the said Institution. The said University organized the Jain University Youth Fest-2023 at NIMHANS Convention Centre, in which, the students presented many programmes amongst which, the petitioners – students enacted a skit / short play to showcase their acting skills. A compact disk (CD) containing the video of the same was made the basis by the 2nd respondent to file the complaint against the petitioners for alleged offences under Sections 153-A, 149 and 295-A IPC and Section 3(1)(r)(s) and (v) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989, dated 10.02.2023.

4. A perusal of the alleged complaint and impugned FIR as well as the transcript of the short play / skit enacted during the aforesaid event organized by the aforesaid Institution is sufficient to

come to the conclusion that the necessary ingredients constituting the aforesaid offences are conspicuously absent, especially when the said skit / short play was done for mere / sheer entertainment purposes and not with any intention to harm or humiliate any community or race nor make any reference to a particular religion or religious belief. It is pertinent to note that the impugned FIR has not been lodged by a person who is the member of the SC/ST community and there is no material to indicate that the petitioners had any specific intention to insult or intimidate with an intent to humiliate a member of SC/ST community in any place within a public view; so also, the skit / short play performed by the petitioner was in the nature of satire / entertainment, which is constitutionally protected under Article 19 of the Constitution of India, which guarantees freedom of speech and expression and the impugned FIR clearly does not meet or satisfy the basic ingredients of the offences alleged against the petitioner.

5. In the case of ***T.Nageshwara Rao vs. State of Karnataka – W.P.No.200425/2021 dated 24.06.2021,*** this Court held as under:-

" *9. Learned counsel for the respondents further contended that, the complaint is not an encyclopedia and in view of the decision reported in the case of M/s. Neeharika Infrastructure Pvt. Ltd. (supra), this Court, at this juncture cannot go into the merits and de-merits of the complaint and scuttle the investigation. No doubt, in the case of M/s. Neeharika Infrastructure Pvt. Ltd. (supra) the Hon'ble Apex Court has issued specific directions regarding exercising of powers under Section 492 of Cr.P.C.. But, it is also made clear that, if prima facie there appears to be abuse of process of law, such powers can be exercised. The Hon'ble Apex Court has cautioned in using such powers in a casual way. Learned counsel for the petitioner, in this context, has placed reliance on the decision reported in (2008) 12 SCC 531 (Gorige Pentaiah Vs. State of Andhra Pradesh and Others), wherein it is specifically observed that, in the complaint under SC & ST Act, there shall be a reference that the complainant was a member of Scheduled Caste or Scheduled Tribe and the accused is not a member of Scheduled Caste or Scheduled Tribe and this aspect was discussed in detail by the Hon'ble Apex Court in Gorige Pentaiah's case and stated that the reference is a mandatory. But, in the instant case, no such reference is forthcoming. A similar view is taken by the Hon'ble Apex Court in Criminal Petition No. 1117/2016 decided on 14th July 2016 (Tejinder Pal Singh Bagga Vs. State of Karnataka reported in 2016 SCC On Line Kar 5458). Hence, it is evident that, assertion in this regard is mandatory as per requirement of Section-3 of SC & ST Act. The Hon'ble*

Apex Court in the decision reported in 2018(13) SCC 612 (Eshwar Pratap Singh and others Vs. State of Uttar Pradesh and Another) has held that, there is no prohibition in law to exercise jurisdiction under Section 482 of Cr.P.C. for quashing the charge sheet in part. Further, no allegation was made in the complaint that the harassment as alleged was based on account of caste. Further, in the decision reported in (2011) 11 SCC 259 (State of Andhra Pradesh represented by the Public Prosecutor, High Court of Andhra Pradesh, Hyderabad and Another), the Hon'ble Apex Court has observed that, the authority of the Courts exists for advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent powers in the absence of specific provisions in the Statute.

(1) Further, in the decision reported in (2020) 4 SCC 727 (Prithvi Raj Chauhan Vs. Union of India and others), the Hon'ble Apex Court has clearly observed that, the Court can, in exceptional cases, exercise powers under Section 482 of Cr.P.C. for quashing the cases to prevent misuse of the provisions on settled parameters. The same view is also reiterated in case of M/s. Neeharika Infrastructures Pvt. Ltd. (supra). This view is again followed by this Court in Criminal Petition No.21/2018 (Ravi and others Vs. State of Karnataka), while granting bail and similar proposition of law is considered regarding reference to caste pertaining to

petitioner or the complainant/accused, which is missing in the instant case.

(2) Hence, on perusal of the citations and dictum laid down by Hon'ble Apex Court, it is evident that the complaint should contain a specific assertion that the complainant belongs to scheduled caste or scheduled Tribe caste and accused does not belong to the said caste. But, this specific aspect is exactly missing in the case on hand. When this basic ingredient itself is missing, the other issues automatically come into play, as there is delay in lodging the complaint. Further, it is also important to note here that, petitioner No.3 himself has lodged the complaint in Crime No.35/2021 on 13.02.2021 and on next day, the complaint in the instant case came to be lodged. Further, no evidence is placed to show that, petitioners are knowing Kannada language. Apart from that, the allegations were that, they abused in Hindi language with reference to caste in order to humiliate, but said verbatim was not produced. Even otherwise, if the wordings asserted in Kannada are taken into consideration, it does not establish that there was any intention to humiliate and there is only simple reference to the caste with reference to earlier transactions.

10. Under these circumstances, looking to the facts and circumstances of this case, incorporation of the provisions of SC & ST Act, without there being relevant ingredients, is an abuse of the process of law and the petitioners Hence, matter requires to be interfered with by this Court to the said extent."

6. In the case of ***Gorige Pentaiah vs. State of Andhrapradesh*** - (***2008) 12 SCC 531***, the Apex Court held as under:-

> ***5.*** *Learned counsel appearing for the appellant submitted that even if all the allegations incorporated in the complaint are taken as true, even then, no offence is made out under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act") and under Sections 447, 427, 506 of the Penal Code, 1860. As far as Section 3(1)(x) of the Act is concerned, it reads as under:*
>
> > *"3. Punishments for offences of atrocities.—(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—*
> > *(i)-(ix)****
> > *(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;"*
>
> ***6.*** *In the instant case, the allegation of Respondent 3 in the entire complaint is that on 27-5-2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate*

Respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.

Scope and ambit of courts' powers under Section 482 CrPC

12. *This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:*

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court; and

(iii) to otherwise secure the ends of justice.

Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

Discussion of decided cases

13. *Reference to the following cases would reveal that the courts have consistently taken the view that they*

must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In Connelly v. Director of Public Prosecutions [1964 AC 1254 : (1964) 2 WLR 1145 : (1964) 2 All ER 401 (HL)] Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in Director of Public Prosecutions v. Humphrys [1977 AC 1 : (1976) 2 WLR 857 : (1976) 2 All ER 497 (HL)] stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the Judge has the power to intervene. He further mentioned that the courts' power to prevent such abuse is of great constitutional importance and should be jealously preserved.

14. *In R.P. Kapur v. State of Punjab [AIR 1960 SC 866] this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:*

> *(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;*
>
> *(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;*
>
> *(iii) where the allegations constitute an offence, but there is no legal evidence*

adduced or the evidence adduced clearly or manifestly fails to prove the charge.

15. *The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.*

16. *This Court in State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404] observed that the wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of*

justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other courts.

17. *In Chandrapal Singh v. Maharaj Singh [(1982) 1 SCC 466 : 1982 SCC (Cri) 249] , in a landlord and tenant matter where criminal proceedings had been initiated, this Court observed in SCC at p. 467, para 1 as under:*

> *"1. A frustrated landlord after having met his waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous."*
>
> *The Court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The Court also observed that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.*

18. *This Court in Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] observed in para 7 as under: (SCC p. 695)*

> *"7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This*

> *is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."*

19. *In State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] this Court in the backdrop of interpretation of various relevant provisions of CrPC 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 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to myriad kinds of cases wherein such power should be exercised: (SCC pp. 378-79, para 102)*

> *"(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 Act concerned (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 Act concerned, 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."

20. *This Court in Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] observed thus: (SCC p. 355, para 132)*

"132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution

in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles."

21. *In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process particularly when matters are essentially of civil nature.*

22. *This Court in Roy V.D. v. State of Kerala [(2000) 8 SCC 590 : 2001 SCC (Cri) 42] observed thus: (SCC p. 597, para 18)*

"18. It is well settled that the power under Section 482 CrPC has to be exercised by the High Court, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under Section 482 CrPC to quash proceedings in a case like the one on hand, would indeed secure the ends of justice."

23. *This Court in Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] observed thus: (SCC p. 128, para 8)*

"8. … It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact.

When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

24. *In Indian Oil Corpn. v. NEPC India Ltd. [(2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] this Court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that: (SCC p. 749, para 13)*

"13. … Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

25. *The questions before us are: whether the case of the appellants comes under any of the categories enumerated in Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] ? Is it a case where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in entirety, do not make out a case against the accused under Sections 420, 467 and 120-B IPC? For determination of the questions it becomes relevant to note the nature of the offences alleged against the appellants, the ingredients of the offences and the averments made in the FIR/complaint.*

26. *A three-Judge Bench of this Court in Inder Mohan Goswami v. State of Uttaranchal [(2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259 : AIR 2008 SC 251] has examined scope and ambit of Section 482 of the Criminal Procedure Code.*

The Court in the said case observed that inherent powers under Section 482 should be exercised for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be fully justified in preventing injustice by invoking inherent powers of the court."

7. So also, in the case of ***Shailesh Kumar V. vs State of Karnataka – (2023) 3 Kant LJ 127,*** this Court held as under:-

*" **13.** If there was no intention of the kind to humiliate, it would not become an offence under Section 3(1)(r) & (s), is what the Constitutional Courts have held. Before considering the judgments so rendered by the Constitutional Courts, I deem it appropriate to notice Section 3(1)(r) & (s) of the Act. Section 3 of the Act deals with punishments for offences of atrocities. Section 3(1)(r) and (s) reads as follows:*

> ***"3. Punishments for offences of atrocities.*** *-(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-*
>
> *(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;*
>
> *(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view."*

14. *Section 3(1)(r) mandates that whoever intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. Section 3(1)(s) would mandate that if any person is seen to have abused the Scheduled Caste or Scheduled Tribe*

by caste name in any place within public view. Therefore, the soul of the provision is intention. The insult should be intentional and the intimidation should be with intent to humiliate a member of the Scheduled Caste or Scheduled Tribe. As observed hereinabove, the charge sheet or the statements do not narrate any other circumstance except saying that the name of the caste of the son of the complainant was also used when abuses were hurled. There is no narration of any intention to insult or humiliate taking the name of the caste either in the statements or in the summary of the charge sheet.

15. *The Apex Court in the case of HITESH VERMA v. STATE OF UTTARAKHAND[1] has held as follows:—*

> *"17. In another judgment reported as Khuman Singh v. State of M.P. [Khuman Singh v. State of M.P., (2020) 18 SCC 763 : 2019 SCC OnLine SC 1104],* ***this Court held that in a case for applicability of Section 3(2)(v) of the Act, the fact that the deceased belonged to Scheduled Caste would not be enough to inflict enhanced punishment. This Court held that there was nothing to suggest that the offence was committed by the appellant only because the deceased belonged to Scheduled Caste.*** *The Court held as under:*
>
> *"15. As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to "Khangar" Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable."*
>
> *18.* ***Therefore, offence under the Act is not established merely on the fact that the informant is a***

> ***member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste.*** *In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out."*

16. *The Apex Court in the aforesaid paragraphs clearly holds that the offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste, unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. The Apex Court narrates that both the victim and the accused therein were in a squabble with regard to a land dispute. In the case at hand, there is no indication of any intention to insult or humiliate and the reason for the squabble between the two was the game of cricket. A co-ordinate Bench of this Court in the case of LOKANATH v. STATE OF KARNATAKA[2] has held as follows:*

> ***"13. Unless the investigation indicates or reveals intention of a person not belonging to scheduled caste or scheduled tribe to commit any of the offences under Section 3 of the Act, in order to oppress or insult or humiliate or subjugate or ridicule a member of scheduled caste or scheduled tribe as such person merely belongs to that caste, the offence under Section 3 cannot be invoked in the charge sheet.*** *It is not as though in every crime, if victim happens to be a member of scheduled caste or scheduled tribe, an offence under Section 3 of the Act has been committed. If motive for crime is not casteist attack, the accused can only be charge sheeted for any of the offences under Penal Code, 1860 that can be appropriately invoked in the background of the incident of crime or under other law which can be applied as the facts and circumstances*

> *indicate.* ***While the Act is essentially meant for protecting the members of scheduled caste or scheduled tribe from atrocity or oppression, at the same, it cannot be allowed to be misused. Therefore there is greater responsibility on the investigating officer to take decision wisely before filing the charge sheet."***

17. *The co-ordinate Bench also holds that there should be an intention to oppress or insult or humiliate or subjugate or ridicule a member of a Scheduled Caste by taking the name of the caste. If there is no motive or intention to insult it cannot become an offence under the Act. The High Court of Orissa in a judgment rendered on 19-12-2022 in SURENDRA KUMAR MISHRA v. STATE OF ORISSA*[3] *following the Apex Court judgment in the case of HITESH VERMA has held that intention is the soul of Section 3(1)(r) & (s) of the Act and if there is no intention the offence cannot even be laid against those accused. The High Court of Orissa has held as follows:*

> *9. In the present case, as it appears the incident happened at a public place when some road work was in progress. Whether at the relevant point of time any other member of the public was present or not is not revealed from Annexure-1.* ***Even accepting for a while that the alleged incident was at a time when other members of the public were present, the question would still be whether the petitioner did commit the overt act with any intention to insult and intimidate the informant on account of him belonging to SC or ST? Intention is a sine qua non for the alleged offence to have been committed. In other words, unless the required intention is found to exist with a purpose to insult and intimidate the victim the latter being a member of SC or ST, no offence under Section 3(1)(x) of the SC & ST (PoA) Act can be said to have been made out. The Apex Court in*** *Hitesh Verma* ***(supra) examined the Legislative intention behind the enactment of SC&ST (PoA) Act and noted down the Statement of Objects and Reasons which indicated that the existing laws***

like protection of Civil Rights Act of 1955 and other provisions of the IPC were found to be inadequate to safeguard the interest and rights of members of SC and ST as crimes have been committed taking advantage of their caste and backwardness. So having regard to the intent and purpose of the law in place meant to protect the statutory and constitutional rights of the marginalized sections of the society, any such offence committed by a person other than a SC or ST must have to have the requisite intention to insult and intimidate his counterpart for him to be from a backward class because of his caste. So it has to be held that all insults or intimidation do not make out an offence under the Act unless it is directed against the person on account of his caste.

10. The petitioner suddenly out of anger abused the informant under the circumstances narrated in annexure-1. No doubt petitioner took the name of the informant's caste while abusing the latter. By taking the caste name or utterances of abuse by taking the name of one's caste would not be an offence under Section 3(1)(x) of the SC & ST (PoA) Act unless the intention is to insult, intimidate the person being a SC or ST*. If the law laid down by the Supreme Court in Hitesh Verma (supra) is read, appreciated and understood in its proper perspective and applied to the case at hand, there appears no such intention on the part of the petitioner for being in dominant position as a man of forward class to insult and intimidate the informant being a member of SC and ST. If the victim is humiliated within public view for being SC or ST and with that intention, any overt act or mischief is committed, an offence under Section 3(1)(x) of the SC & ST (PoA) Act would be made out otherwise not. Though the informant was abused at a public place or may be within public view by taking his caste name but as it is made to appear from the conduct of the petitioner, it was apparently without any intention to insult, intimidate and to humiliate him. It was pure and simple an abuse by the petitioner under the peculiar facts and circumstances and a sudden outburst and on the spur of the moment without carrying the requisite intention to humiliate the informant so to say. Therefore the contention of Mr. Mohapatra to the aforesaid extent is acceptable and justified and not beyond,"*

18. *If the law laid down by the Apex Court, the co-ordinate Bench of this Court and even that of the High Court of Orissa is juxtaposed what would unmistakably emerge is, mere taking the name of the caste of the victim would not make it an offence, unless it is with an intention to insult the person belonging to the said caste. That being conspicuously absent in the case at hand, permitting further proceedings to continue qua the offences under the Act would become an abuse of the process of law."*

8. In the case of ***Indibly Creative (P) Ltd. V. State of West Bengal, - (2020) 12 SCC 436,*** the Apex Court held as under:-

" 23. *Satire is a literary genre where "topical issues" are "held up to scorn by means of ridicule or irony." [Madhavi Goradia Divan, Facets of Media Law (Eastern Book Company, 2013), p. 154.] It is one of the most effective art forms revealing the absurdities, hypocrisies and contradictions in so much of life. It has the unique ability to quickly and clearly make a point and facilitate understanding in ways that other forms of communication and expression often do not. However, we cannot ignore that like all forms of speech and expression, satirical expression may be restricted in accordance with the restrictions envisaged under Article 19(2) of the Constitution. For example, when satire targets society's marginalised, it can have the power to confirm and strengthen people's prejudices against the group in question, which only marginalises and disenfranchises them more.*

> ***46.*** *Contemporary events reveal that there is a growing intolerance : intolerance which is unaccepting of the rights of others in society to freely espouse their views and to portray them in print, in the theatre or in the celluloid media. Organised groups and interests pose a serious danger to the existence of the right to free speech and expression. If the right of the playwright, artist, musician or actor were to be subjected to popular notions of what is or is not acceptable, the right itself and its guarantee under the Constitution would be rendered illusory. The true purpose of art, as manifest in its myriad forms, is to question and provoke. Art in an elemental sense reflects a human urge to question the assumptions on which societal values may be founded. In questioning prevailing social values and popular cultures, every art form seeks to espouse a vision. Underlying the vision of the artist is a desire to find a new meaning for existence. The artist, in an effort to do so, is entitled to the fullest liberty and freedom to critique and criticise. Satire and irony are willing allies of the quest to entertain while at the same time to lead to self-reflection. We find in the foibles of others an image of our own lives. Our experiences provide meaning to our existence. Art is as much for the mainstream as it is for the margins. The Constitution protects the ability of every individual citizen to believe as much as to communicate, to conceptualise as much as to share."*

9. In the case of ***Ajit Hanumakkanavar v. State of Karnataka – Criminal Petition No. 6/2019 Dated 24.01.2019,*** this Court held as under:-

" 9. According to 2nd respondent as well as the prosecution, above statement made by petitioner – accused would attract provisions of Sections 153A and 505(2) of IPC. In that view of the matter, said provisions are extracted herein below for immediate reference.

"Section-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) 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.

Offences 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 enlarged 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): 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."

10. The interpretation of expression of the words occurring in Section 153A has been considered by the Hon'ble Apex court in the case of ***Bilal Ahmed Kaloo v. State of A.P.*** *reported in (1997)7 SCC 431, wherein the prosecution had proceeded against the said accused for having made statements or spreading the news that Kashmiri Muslims were being subjected to Atrocities by the Indian Army personnel, would attract Sections 153-A and 505(2) of IPC and while examining the correctness and legality of the judgment of conviction passed by trial Court as affirmed by the High Court, it came to be held that common ingredient in both the offences under Sections 153-A and 505(2) of IPC is promoting feeling of enmity, hatred or ill will between different religious or racial or linguistic or regional groups or castes or communities and after referring to the judgment in the matter of* ***Balwant Singh v. State of Punjab*** *reported in (1995)3 SCC 214, it came to be held in unequivocal terms that 'mens rea' is an equally necessary postulate for the offence under Section*

505(2) as could be discerned from the words or expression occurring in Section 505(2) of IPC. Thus, while upsetting the findings of the trial Court and the High Court and noticing that common feature in both Sections 153-A and 505(2) of IPC being promotion of feeling of enmity, hatred or ill will "between different" religious or racial or linguistic or regional groups or castes and communities, held that at least two such groups or communities should be involved. It has been further held that merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of these two sections viz., 153-A or 505(2) of IPC.

11. In ***Manzar Sayeed Khan v. State of Maharashtra*** *reported in (2007)5 SCC 1 Hon'ble Apex Court held that intention of the maker of statement has to be judged primarily by the language and the circumstances and the matter complained of has to be read as a whole.*

12. By referring to ***Ramesh Vs. Union of India*** *reported in* ***AIR 1988 SC 775*** *wherein the observations of the High Court of Nagaland in the case of* ***Bhagwati Charan Shukla*** *Vs.* ***Provincial Government*** *reported in AIR 1947 Nagaland 1 were made, wherein it came to be observed:*

> *"….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".*

It is in this background the expression or the words which are said to have been uttered by petitioner during the course of programme aired on television will have to be examined."

10. Under these circumstances, I am of the view that continuation of the impugned proceedings against the petitioners would amount to abuse of process of law warranting interference by this Court in the present petition.

11. In the result, I pass the following:

ORDER

(i) Both Crl.P.No.2845/2023 and Crl.P.No.2064/2023 are hereby allowed.

(ii) All further proceedings pursuant to Crime No.32/2023 registered by the 1st respondent – Police, registered for the offences punishable under Sections 153-A, 149 and 295-A of IPC and Section 3 (1) (r) (s) and (v) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989, pending on the file of LXX Addl.City Civil and Sessions Judge, Bangalore, insofar as the petitioners are concerned are hereby quashed.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

MDS/SRL