Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION STAMP NO. 4732 OF 2020
(CRIMINAL WP-ASDB-LDVC-287 OF 2020)

Ms.Sunaina Holey
Age : 39 years,
R/o : Progressive Villa,
Sector No. 26,
MAFCO Road, Vashi
Navi Mumbai 400 703 ....Petitioner

Vs.

1. State of Maharashtra
Through the Public Prosecutor
High Court, Bombay

2. Senior Police Inspector,
Azad Maidan Police Station,
Mumbai

3. Mr.Shashikant Pawar
Age : 40 years, Occ: Sub-Inspector
R/a: Flat No. 206, Guru Prem CHS,
Plot No. 25, Sector 4, Kalamboli
Navi Mumbai 410 218 ..... Respondents

Dr.Abhinav Chandrachud a/w Mr.Chandansingh Shekhawat a/w Mr.Yashowardhan Deshmukh a/w Ms.Sailee Dhayalkar i/b Farishta Menon, for the Petitioner.

Mr.Manoj Mohite, Senior Advocate a/w Mr.Vivek Babar a/w Mr.J.P.Yagnik, APP for State.

CORAM : S. S. SHINDE &
M. S. KARNIK, JJ

RESERVED ON : 07th JANUARY, 2021
PRONOUNCED ON : 05th MAY, 2021

JUDGMENT :

. Rule. Rule is made returnable forthwith. Heard finally with consent.

2. Invoking the Jurisdiction of this Court under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, the Petitioner prays for quashing of FIR No. 97 OF 2020 dated 15/04/2020 registered with Azad Maidan Police Station for the offence punishable under Section 153A of the Indian Penal Code, 1860 (for short 'IPC') .

3. The said FIR has been registered against the Petitioner for a "tweet" (or referred to as a statement) which she posted on the social media website known as 'Twitter' on 14/04/2020. The said tweet reads thus :

> "Crowd shouting Yeh ALLAH KE TARAF SE NAHI HAI YE MODI KE TARAF SE HAI- What's going to happen next @ officeofut @ AUThackeray @priyankac19? PR karona ab. Blame it on @narendramodiji.Hain? Bandra Masjid Location Hai. Ab aur kuch bolu? Single Source Kaafi Hai. @ Dev_Fadnavis Help".

4. It is the stand of the Respondent - State that by reposting the video on Twitter with the above message on 14/04/2020, the Petitioner thereby sought to create hatred and enmity between Hindus and Muslims. The transcript of the video recording reposted by the Petitioner on Twitter is as follows:

> "Person addressing the crowd (Person 1): Tum log jo ye dar rahe hai thik hai, takleef hai, takleef ho Rahi hai, mein samaj sakta hu, lekin..... ye Allah ke tarraf se hai, agar jo ye bol de ke ye Allah ke taraf se nahi hai wo iman waala nahi hai. Bolo Allah ke taraf se hai ke nahi?"

In the video, a member of the crowd is seen blaming the Prime Minister of India for the outbreak of Covid-19 pandemic.

5. According to learned Counsel Shri Chandrachud appearing on behalf of the Petitioner, if the contents of tweet, the FIR, the materials accompanying the FIR and the material collected during the investigation by the police from April 2020 are considered in its entirety, it would clearly reveal that ingredients for constituting an offence under Section 153A IPC are not made out. Learned Advocate submitted that the Petitioner is not the author or the creator of the said video and that, no case has been registered against the person(s) who created the said video. He further pointed out that no case has been registered against the person blaming Prime Minister of

India for the outbreak of Covid-19 pandemic in the video. According to him, the Petitioner merely “reposted” the video on her twitter feed which was already created by someone else.

6. Learned Counsel urged that while “Person 1” in the video informs the crowd that Covid-19 pandemic is an act of God, one member of the crowd can be heard shouting that Covid-19 pandemic is not an act of God but has been brought about by the Prime Minister of India. The Petitioner was unhappy with this viewpoint and reposted the video in order to criticize the viewpoint of the person that Covid 19 pandemic was brought about by Prime Minister of India.

7. Learned Counsel then invited our attention to Section 153A of the IPC. He submitted that the ingredients of Section 153 are not made out even upon considering all materials on record. Learned Counsel relied upon various judgments of the Hon'ble Supreme Court, this Court and also those of the United States (for short US) Supreme Court in support of his submissions that no case is made out against the Petitioner.

8. In support of his submissions, learned Counsel relied

upon the decision of the Hon'ble Supreme Court in the case of [1]**Manzar Sayeed Khan Vs. State of Maharashtra**. According to him there are four principles discernible from the said decision which are thus :

> a. Firstly, there is no need to wait for an investigation to be completed before quashing an FIR under Section 482 of the Code of Criminal Procedure,1973 (paragraphs 10, 20). In Manzar Sayeed Khan's (supra) case, the High Court had taken the view that the investigation must be completed before an FIR can be quashed. However, the Supreme Court disagreed with this view and quashed the FIR.
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> b. Secondly, the intention of the accused must be judged on the basis of the words used by accused along with surrounding circumstances (paragraph 16).
>
> c. Thirdly, the statement in question, on the basis of which the FIR has been registered against the accused, must be judged on the basis of what reasonable and strong-minded person will think of the statement, and not on the basis of the views of hypersensitive persons who scent danger in every hostile point of view (paragraph 17)
>
> d. Fourthly, in order to constitute an offence under Section 153A of the IPC, two communities must be involved. It is not enough to hurt the feelings of only one community alone (Paragraph 18)."

9. Counsel then relied upon the decision of this Court in

1 (2007) 5 SCC 1

the case of [2]**Joseph Bain D'Souza and anr. Vs. The State of Maharashtra.** He pointed out that despite strong and extreme language used against the Muslim community and despite the tense circumstances in which the said editorials which were subject matter of FIR were written, this Court thought it fit not to direct the police to register an FIR against the editor of 'Saamna' under Section 153A of IPC for writing the said editorial. This because the editorial was a criticism against the anti-national activities of some of the members of minority community and not against the minority community as a whole and therefore this Court was of the view that the article does not come within the ambit of Section 153A and 153B of Code. Learned Counsel compared the words used by the Petitioner in her tweet in the instant case with the extreme and harsh words used by the editor of 'Saamna' in the Joseph Bain's case (supra) to contend that Petitioners words were innocuous and harmless in comparison. He urged that the Petitioner in the present case was not making the statement against the Muslim community as a whole but was only criticizing one member of a crowd who was blaming the Prime Minister of India for the outbreak of Covid - 19 pandemic.

2 1994 SCC Online Bom 461

10. Relying on the decision of the Division Bench of this Court in [3]**Rajaram Shankar Patwardhan Vs. State of Maharashtra and anr**. in Criminal Application No. 4746 of 2017, learned Counsel pointed out that when the accused is not the creator of a source material, but has only made a reference to the such material, maintaining a criminal prosecution in such circumstances would be an abuse of the process of law. Learned Counsel placed emphasis on the Sanskrit shlok (verse) cited in the said decision holding that the way forward for progressive society is for one thought to be countered by another and not to prosecute the speaker for saying something which is incorrect. Relying on the ratio of Rajaram Patwardhan case (supra), learned Counsel submitted that firstly the Petitioner is not the creator of the video and therefore cannot be prosecuted for merely reposting the video, more so when the creator of the video has not been prosecuted; secondly if the Petitioner has said something wrong in her video, then the way of a progressive society is for her thought to be countered with another thought by some other member of the public and not by prosecuting her.

11. Learned Counsel then invited our attention to the judgment of the US Supreme Court in the case of [4]**Whitney Vs.**

3 Cri. Application No. 4746 of 2017
4 274 US 357 (1927) (pp.372-376)

California. He submitted that US Supreme Court delivered a classic judgment stating that remedy for false speech was "more speech, not enforced silence" According to him the distinction was made between mere "advocacy" of a point of view and "incitement" of an offence, a test which was subsequently adopted in Shreya Singhal's case. He urged that Justice Brandeis laid down the test for imminence by holding that when accused person delivers a speech, if there is sufficient time for discussion to take place whereby others can contradict the accused person with their own thoughts, then the accused person should not be prosecuted.

12. Learned Counsel then relied on the decision in the case of [5]**Cohen Vs. California.** The U.S. Supreme Court was dealing with the case of a person who was convicted for wearing a jacket in a courthouse which contained a four-lettered abusive word on it. He pointed out that the Supreme Court reversed the conviction. While arriving at its decision, Justice Harlan, who delivered the majority judgment, held that those who were in the courthouse could have simply averted their eyes. Learned Counsel quoted the words of Justice Felix Frankfurter holding that right to freedom of speech and expression include the "right

5 403 U.S.15 (1971) (at pp.19-26)

to speak foolishly and without moderation'.

13. Reliance was then placed by learned Counsel on the decision of this Court in the case of [6]**Shreya Singhal Vs. Union of India**. According to him the Hon'ble Supreme Court has held that the Judgments of the U.S. Supreme Court have great persuasive value when it comes to interpreting the right to freedom of speech and expression in India. He submits that it has been held in the said case that restrictions on free speech are even narrower in India than they are in U.S., since in India there are only 8 specific exceptions to free speech under Article 19(2) as compared to U.S. Constitution under which the restrictions can be much broader.

14. Citing the decision in the case of [7]**Balwant Singh Vs. State of Punjab** where the Supreme Court was considering the case of two persons who shouted offensive slogans like 'Khalistan Zindabad' in a crowded place on the day on which the former Prime Minister of India, Smt. Indira Gandhi was assassinated, learned Counsel submitted that Supreme Court held the fact that no public disorder had actually occurred after

6 (2015) 5 SCC 1
7 (1995) 3 SCC 214

the slogans were uttered was relevant in holding that no offence has been committed.

15. It is the submission of learned Counsel that in [8]**Bilal Ahmad Kaloo Vs. State of A.P.,** the Supreme Court was considering a case of a boy from Kashmir who had visited Hyderabad and informed young Muslim boys there that the Indian army was perpetrating atrocities against Muslims in Kashmir. Learned Counsel submits that despite espousing such extreme view, the Supreme Court held that no offence under Section 153A of IPC is made out unless there are two communities involved. Learned Counsel urged that applying the principles in Balwant Singh's and Bilal Ahmed Kaloo's cases to the instant case, no case is made out against the Petitioner for the reason firstly, despite having investigated the case from April 2020 onwards, the police have not been able to point out even a single untoward incident which occurred on account of Petitioner's speech, and secondly the Petitioner in her tweet has not referred to even a single community, let alone to two communities. He thus submitted that as per the principles laid down in Bilal Kaloo's case, no offence is made out.

8 (1997) 7 SCC 431

16. A detailed reference is then made to the decision of the Hon'ble Supreme Court in the case of **Amish Devgan Vs. Union on India in Writ Petition (Criminal) No. 160 of 2020 decided on 07/12/2020**. He submitted that the television anchor on a prominent news channels (News 18 India and CNBC Awaaz) has referred to a beloved saint, Moinuddin Chisti, as "Terrorist Chisti" and "Robber Chisti". The anchor had said that terrorist Chisti came, Robber Chisti came and thereafter the religion changed. He pointed out that the Hon'ble Supreme Court held that the anchor in the said case has impliedly referred to two communities, Hindus and Muslims, by imputing that "Pir Hajrat Moinuddin Chisti, a terrorist and robber, had by fear and intimidation coerced Hindus to embrace Islam".

17. Learned Counsel invited our attention to the test of 'reasonable person' expressed by Hon'ble Supreme Court in paragraph 49 as 'the words used by accused must be judged from the standpoint of a reasonable person, not an oversensitive person who scents danger in every hostile point of view'. Learned Counsel submitted that the 'reasonable person test' has not been diluted in any manner in the said judgment. He submitted that an influential person such as 'top government or executive functionary, opposition leader, political or social leader

of following or a credible anchor on a T.V. show' carries more credibility and has to exercise his right to free speech with more restraint, as his/her speech will be taken more seriously than that of a 'common person on the street'. He submitted that merely because the Petitioner in the present case has thousands of followers on Twitter does not mean that she is a social "leader" as understood by the Supreme Court. He submits that there are several persons on Twitter who have thousands of followers but who are not social "leaders" by any stretch of imagination. According to him, the Petitioner is akin to a "common person on the street" and her tweet must therefore be treated as such. Learned Counsel then emphasized that the person is under no obligation to avoid a controversial or sensitive topic. Even expressing an extreme opinion does not amount to hate speech. Learned Counsel further urged that Hon'ble Supreme Court reiterated the test of imminence, by holding that the likelihood of harm arising out of the accused's speech must not be remote, conjectural or far-fetched. He submits that "public tranquillity" under Section 153A of the IPC does not mean that the accused's speech must merely affect public serenity, but mean that the accused 's speech must give rise to violence or an insurrection as has been explained by the Apex Court.

18. Accordingly it is submitted that the allegations in the FIR even if they are taken at their face value and in their entirety do not prima facie constitute any offence or make out case against the Petitioner under Section 153A of IPC. He placed reliance on the decision of the Hon'ble Supreme Court in the case of [9]**State of Haryana Vs. Bhajan Lal** to submit that applying the principles laid down in Bhajanlal's case to the instant case, the materials accompanying the FIR in the instant case (tweet and video) and the investigation done by Police from April 2020 onwards do not make out any offence against the Petitioner.

SUBMISSIONS OF THE RESPONDENTS

19. Shri Manoj Mohite learned Senior Advocate appearing on behalf of the Respondent – State submitted that FIR against the Petitioner was lodged by a Police Officer who is working in the Social Media Lab branch of the police department. According to him this fact assumes immense importance as the complainant is well experienced and a trained police officer who has the onerous responsibility of monitoring various social media platforms so as to cull out material from social media which can cause breach of public order situation. According to him the complainant police officer lodged the FIR against the Petitioner

9 1992 Supp (1) SCC 335

only after diligently noticing that her tweet is offensive against the people of Muslim faith and taking into consideration the public order situation during the pandemic and the migrant crisis. This fact according to him gives immense amount of importance to the FIR as it has not been lodged by a layman but by a trained police officer.

20. Learned Senior Advocate invited our attention to the video recording and the tweet. He submits that from the tweet made by the Petitioner it becomes explicitly clear that she has deliberately distorted facts. Learned Senior Advocate painstakingly pointed out that what has been claimed by the Petitioner in her tweet is that the entire crowd was blaming the Hon'ble Prime Minister whereas if the video is seen it becomes extremely difficult to ascertain as to who amongst the crowd took the name of Hon'ble Prime Minister. He urged that the Petitioner has deliberately amplified the weakened voice of a single individual and has projected in her tweet that the entire crowd is shouting the name of Hon'ble Prime Minister. He emphasised that the Petitioner has deliberately drawn the attention to a neighbouring Masjid as the location of the crowd gathering which was completely unnecessary and uncalled for as the crowd which had gathered comprised of people of all faiths and in no way was

the location of the Masjid important or necessary to be stated. The entire attempt was to wrongly portray it to be a gathering of members of the Muslim community and blame them for the spread of the virus.

21. Learned Senior Advocate submits that the tweet was made on 14/04/2020. According to him, this date assumes immense importance as there was a nationwide lockdown declared from 25/03/2020 to 14/04/2020. The nation was battling with one of the worst crisis befallen on mankind. The pandemic had infused fear, terror, chaos and confusion in the minds and hearts of the people. He points out that the crowd had gathered near the Bandra railway station due to a rumour circulated that the trains shall be leaving Bandra railway station to enable the people to reach their native place. He submits that if a crowd of such huge magnitude assembles at such place, it definitely creates a public order situation. The police machinery realising the sensitivity of the situation asked a gentleman to address the crowd and thereby pacify them. However, the Petitioner through her tweet distorted this bonafide fact and started identifying the crowd gathered by means of their religion and also by the location at which they had assembled. This fact in his submission clearly expresses the true intention of

the Petitioner which is definitely malafide and is provocative and instigative in nature.

22. Learned Senior Advocate submitted that video shared by the Petitioner along with a tweet was further circulated by other people on twitter wherein further blame was cast on the people of Muslim faith for spreading Corona virus just as it was done targeting the people belonging to the Tabligi Jamat, wherein the virus itself was renamed as the Tabligi Jamat Virus. Learned Senior Advocate submitted that the tweet of the Petitioner had far reaching consequences and implications and as a result the true intent and scope of the Petitioner's tweet needs to be investigated, which would not be possible if the FIR is quashed. He submits that the Petitioner's tweet clearly satisfied the ingredients mentioned in Section 153A(b) as her tweet is prejudicial to the maintenance of harmony of different religious group and is also likely to disturb public tranquillity.

23. Learned Senior Advocate then submitted that if the tweeter profile of the Petitioner is examined, it becomes apparently clear that the Petitioner is an ardent follower of a particular religion and an ideology. He fairly submits that this by itself is in no manner an illegal act. However, according to

him, the said facts assumes immense importance from the point of view of examining the tweet made by the Petitioner, wherein she has specifically targeted people of Muslim faith. He then provided statistics of the followers which the Petitioner had on tweeter to indicate the magnitude of the effect and reach of the Petitioner's tweet. He pointed out that the Petitioner possessed 10.5 thousand followers and also had made around 10.8 thousand re-tweets. Learned Senior Advocate submitted that, this fact makes it explicitly clear that the Petitioner has a very popular and ardent following in social media which obviously elevates her to the position of a social media influencer.

24. Relying on the decision of the Hon'ble Supreme Court in the case of Amish Devgan (supra), learned Senior Advocate submits that people exerting influence stand on a different footing and are accordingly obligated to exercise more restraint and speak responsibly. Learned Senior Advocate submits that the Petitioner enjoys a humongous fan following and as a result her tweet carries substantial weightage and credence in the social media. He submits that the Petitioner has clearly abused this responsibility by making this tweet insinuating that the people of Muslim faith were responsible for spreading the virus as a "single source" and the State Government was only doing

"P.R." and encouraging them. Learned Senior Advocate submitted that in order to constitute an offence under Section 153A of the IPC, it is expedient that only mere words should not be looked into but sometimes the intention is obscured as well as it may possess an underlying hidden meaning which also needs to be looked into. According to learned Senior Advocate, applying the said principle to the tweet of the Petitioner, it becomes explicitly clear that even though the outward appearance of the tweet might seem innocuous, still the true meaning needs to be ascertained on the basis of the surrounding situation and circumstances engulfing the tweet due to which investigation is required to ascertain the said hidden meaning of the tweet.

25. Inviting our attention to the Section 153A of IPC, learned Senior Advocate submits that section starts with the word 'promoting' which with all its connotation lays down that promoting enmity between different groups on several grounds is sufficient to fall within the ambit of this section. He submits that section 153A in no manner whatsoever envisages a pre-requisite condition that violence or harm must ensue as a result of the act of promotion of enmity. Learned Senior Advocate then pointed out that three FIRs were registered relating to the Bandra railway

station, wherein one of the FIR is registered against 200 unknown people due to the reason that a law and order situation had occurred at the said place and as to whether the said law and order situation had erupted due to the tweet of the Petitioner is a matter of investigation and hence according to him the FIR should not be quashed to allow this investigation. Learned Senior Advocate was at pains to point out that FIR has to be judged on the basis of the situation as it then existed when the FIR was registered and not on basis subsequent events.

26. Learned Senior Advocate also made extensive reference to the decision of the Hon'ble Supreme Court in the case of Amish Devgan (supra). His argument is that Hon'ble Supreme Court having discussed the variable context, intent and harm, has further clarified that the FIR need not be quashed when there are factually disputed arguments raised which can only been ascertained after the investigation. The same principle will have application to the instant case as the Petitioner is raising several disputed questions of facts which are definitely matter of investigation, apart from that it is a trite principle of law that the High Court should exercise its jurisdiction under section 482 in the rarest of rare case and with circumspection before quashing the FIR. He submits that same principle was

applied by Hon'ble Supreme Court in Amish Devgan's case and accordingly Hon'ble Supreme Court was pleased to reject the Petition of Amish Devgan for quashing of FIR. He vehemently urged that the said principle would apply to the present case and it would be inappropriate to stifle the case of the prosecution at such a nascent stage and hence the present FIR registered against the Petitioner deserves investigation and should not be quashed. Learned Senior Advocate then was at pains to point out that even in Amish Devgan's case, there was no reference to two different religions and communities for according to him, in fact in the said judgment there were insinuations made against one community but the inference was drawn that it affected the other community. He submits that similarly in the present matter too, the Petitioner has not mentioned two different religions, however, her conduct, the twitter profile and the words used clearly indicate the intention to involve two communities.

27. Heavily relying on the decision of the Supreme Court in the case of Amish Devgan, learned Senior Advocate reiterates that if the tweet of the Petitioner is perused, it becomes clear that she too has not mentioned two religions, groups or communities in her tweet, however she has in a very sly manner made obvious references insinuating people following Muslim

faith. He submits that the Petitioner's tweet is made with words in such a manner that the real intention is disguised and obscured. Similarly, her tweet is capable of causing silent harm. Learned Senior Advocate emphasised that in order to decipher the true intent and meaning of the tweet investigation has to be carried out.

CONSIDERATION

28. We have heard learned Counsel for the parties at length. The tweet in respect of which the offence has been registered under Section 153A made on 14/04/2020 is reproduced in paragraph 3 of this judgment. The transcript of the video recording reposted by the Petitioner on Twitter which is the basis for the allegation that the Petitioner sought to create enmity between the Hindus and Muslims is reproduced in paragraph 4 of this judgment.

29. Section 153A of IPC, violation of which forms the basis of registering the crime against the Petitioner reads thus :

> "[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.]

30. It is an admitted position that the Petitioner did not

create the said video and that no case has been registered against the person(s) who created the said video. The Petitioner "reposted" the video which was already created by someone else on her Twitter feed. In the said video, one person is seen informing the crowd that Covid-19 pandemic is an act of God, when another person in the crowd can be heard shouting that the Covid-19 pandemic is not an act of God but has been brought about by the Prime Minister of India. It is the submission of the learned Counsel for the Petitioner that she was unhappy with this viewpoint and reposted the video in order to criticize the viewpoint that Covid-19 pandemic was brought about by the Prime Minister of India. The question for consideration is whether reposting the video along with the tweet by the Petitioner makes out a case against the Petitioner thereby constituting offence under Section 153A of IPC.

31. In order to appreciate the controversy, we firstly refer to the decision of the Hon'ble Supreme Court in the case of **Manzar Sayeed Khan** *(supra).* In Manzar Sayeed Khan' case, Their Lordship were considering the case in respect of an accused who had published a book which contained pejorative statements against Shivaji Maharaj. It will be pertinent to reproduce paragraphs 10, 16, 17, 18, 19, 20, 21 of Manzar

Sayeed Khan's case where Their Lordships observed thus :

> 10. On 05.05.2004, the counsel for the appellant submitted written submissions that no offence under Section 153 and 153A was made out against the appellants. During the pendency of the writ petitions, interim order of stay of further proceedings in FIR No. 10 of 2004 was granted. The affidavit dated 16.04.2004 filed by Prof. James W. Laine, the author of the book, was taken on record on 27.04.2004 and the affidavit dated 20.04.2004 filed by the appellant-publisher of the book, was also taken on record on 27.04.2004. The High Court on 06.05.2004 recorded an order that the undertakings given by Prof. James W. Laine as well as by the appellants were accepted by the Court, but the interim stay order granted on 23.02.2004, whereby further proceedings in the FIR were stayed, was vacated holding that the investigation was not complete and the Court had to see all the statements recorded after full investigation. The Criminal Writ Petitions filed by the appellants were kept pending. Now, the order dated 06.05.2004 is impugned before us by the appellants.

> 16.Section 153-A 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 tranquillity. 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.

17. In Ramesh Chotalal Dalal v. Union of India [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’"(Ramesh Case, SCC p. 676, para 13)

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 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 acknowledgment 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.

20. In State of Haryana v. Chaudhary Bhajanlal [AIR 1992 SC 604], this Court has observed that an FIR can be quashed if it

> does not disclose an offence and there is no need for any investigation or recording of any statement.
>
> 21. In the result, for the abovesaid reasons, the respondents shall not proceed against Professor James W. Laine, the author of the book, for offences under Sections 153, 153A and 34 of the IPC being the subject matter of FIR No. 10 of 2004 registered at the Deccan Police Station, Pune.
>
> (emphasis supplied)

32. In **Balwant Singh's** case (supra) the Hon'ble Supreme Court was considering the case of two persons who shouted offensive slogans like "Khalistan Zindabad" in a crowded place on the date on which the former Prime Minster of India, Smt.Indira Gandhi was assassinated. Their Lordships in paragraph 9 observed thus :

> "9. Insofar as the offence under Section 153-A IPC is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities. In our opinion only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or effect public tranquillity, that the law needs to step in to prevent such an activity. The facts and circumstances of this case unmistakably show that there was no disturbance or semblance of disturbance of law and order or of public order or peace and

> tranquillity in the area from where the appellants were apprehended while raising slogans on account of the activities of the appellants. 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. In this case, the prosecution has not been able to establish any mens rea on the part of the appellants, as envisaged by the provisions of Section 153-A IPC, by their raising causally the three slogans a couple of times. The offence under Section 153-A IPC is, therefore, not made out. "
>
> (emphasis supplied)

33. In the case of **Bilal Ahmed Kaloo's** case (supra) the Hon'ble Supreme Court was considering the case of a boy from Kashmir who had visited Hyderabad and informed young Muslim boys there that the Indian army was perpetrating atrocities against Muslims in Kashmir. The relevant paragraphs 9, 12, 15, 16 which are material read thus :

> "9. Evidence of the prosecution relating to offences under Section 153-A and 505(2) IPC consists of oral testimony of certain witnesses who claimed that appellant was telling others that the Army personnel have been committing atrocities on Muslims in Kashmir. Among those witnesses PW 7, PW 12 and PW 13 were not cross-examined at all. Accepting their evidence, it can be held without any difficulty that prosecution has established beyond doubt that appellant was spreading the news that members of the Indian Army were indulging in commission of atrocities against Kashmiri Muslims. So it is not necessary to advert to the other evidence which only repeats what those witnesses said. Hence the question to be decided now is whether those acts of

the appellant would attract the penal consequences envisaged in Section 153-A or 505(2) of IPC.

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 "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, anyone 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.

15. The common feature in both sections being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.

16. The result of the said discussion is that appellant who has not done anything as against any religious, racial or linguistic or regional group or community cannot be held guilty of either the offence under Section 153A or under Section 505(2) of IPC."

(emphasis supplied)

34. In **Shreya Singhal's** case *(supra),* Hon'ble Supreme

Court referred to the decision of US Supreme Court in the case of Whitney Vs. California (supra), relevant paragraphs of which read thus:

> 13. This leads us to a discussion of what is the content of the expression "freedom of speech and expression". There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the security of the State, friendly relations with foreign States, etc. Why it is important to have these three concepts in mind is because most of the arguments of both petitioners and respondents tended to veer around the expression "public order".
>
> 14. It is at this point that a word needs to be said about the use of American judgments in the context of Article 19(1)(a). In virtually every significant judgment of this Court, reference has been made to judgments from across the Atlantic. Is it safe to do so?
>
> 15. It is significant to notice first the differences between the US First Amendment and Article 19(1)(a) read with Article 19(2). The first important difference is the absoluteness of the US First Amendment - Congress shall make no law which abridges the freedom of speech. Second, whereas the US First Amendment

speaks of freedom of speech and of the press, without any reference to "expression", Article 19(1)(a) speaks of freedom of speech and expression without any reference to "the press". Third, under the US Constitution, speech may be abridged, whereas under our Constitution, reasonable restrictions may be imposed. Fourth, under our Constitution such restrictions have to be in the interest of eight designated subject matters - that is any law seeking to impose a restriction on the freedom of speech can only pass muster if it is proximately related to any of the eight subject matters set out in Article 19(2).

16. Insofar as the first apparent difference is concerned, the US Supreme Court has never given literal effect to the declaration that Congress shall make no law abridging the freedom of speech. The approach of the Court which is succinctly stated in one of the early US Supreme Court Judgments, continues even today. In Chaplinsky v. New Hampshire, [86 L. Ed. 1031: 315 US 568 (1942)], Murphy J. who delivered the opinion of the Court put it thus: (L Ed p.1035)

"Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words-those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. 'Resort to epithets or personal abuse is not in

any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.' Cantwell v. Connecticut, [310 U.S. 296 : 60 S.Ct. 900 : 84 L.Ed.1213 : 128 ALR. 1352 (1940), US pp. 309, 310 : S Ct p.906”

17. So far as the second apparent difference is concerned, the American Supreme Court has included "expression" as part of freedom of speech and this Court has included "the press" as being covered under Article 19(1)(a), so that, as a matter of judicial interpretation, both the US and India protect the freedom of speech and expression as well as press freedom. Insofar as abridgment and reasonable restrictions are concerned, both the US Supreme Court and this Court have held that a restriction in order to be reasonable must be narrowly tailored or narrowly interpreted so as to abridge or restrict only what is absolutely necessary. It is only when it comes to the eight subject matters that there is a vast difference. In the US, if there is a compelling necessity to achieve an important governmental or societal goal, a law abridging freedom of speech may pass muster. But in India, such law cannot pass muster if it is in the interest of the general public. Such law has to be covered by one of the eight subject - matters set out under Article 19(2). If it does not, and is outside the pale of 19(2), Indian courts will strike down such law.

18. Viewed from the above perspective, American judgments have great persuasive value on the content of freedom of speech and expression and the tests laid down for its infringement. It is only when it comes to subserving the general public interest that there is the world of a difference. This is perhaps why in Kameshwar Prasad . v. The State of Bihar [1962 Supp (3) SCR 369 : AIR 1962 SC 1166], this Court held: (SCR p. 378 : AIR pp. 1169-70, para 8)

> "As regards these decisions of the American Courts, it should be borne in mind that though the First Amendment to the Constitution of the United State reading "Congress shall make no law.... abridging the freedom of speech..." appears to confer no power on the Congress to impose any restriction on the exercise of the guaranteed right, still it has always been understood that the freedom guaranteed is subject to the police power – the scope of which however has not been defined with precision or uniformly. It is on the basis of the police power to abridge that freedom that the constitutional validity of laws penalising libels, and those relating to sedition, or to obscene publications etc., has been sustained. The resultant flexibility of the restrictions that could be validly imposed renders the American decisions inapplicable to and without much use for resolving the questions arising under Art. 19(1) (a) or (b) of our Constitution wherein the grounds on which limitations might be placed on the guaranteed right are set out with definiteness and precision."
>
> (emphasis supplied)

35. At this juncture itself we refer to the decision in Whitney Vs.California (supra) to appreciate the test for imminence which Justice Brandeis laid down and held as follows.

> "Those who won our independence believed that the final end of the state was to make men free to develop their faculties, and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them,

discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law-the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.

Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. Condonation of a breach enhances the probability. Expressions of approval add to the probability. Propagation of the criminal state of mind by teaching syndicalism increases it. Advocacy of law-breaking heightens it still further. But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there

is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated.

Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom. Such, in my opinion, is the command of the Constitution. It is therefore always open to Americans to challenge a law abridging free speech and assembly by showing that there was no emergency justifying it."

(emphasis supplied)

36. We may also profitably refer to the decision in **Cohen Vs. California** (supra) where it is held as follows.

"Appellant's conviction, then, rests squarely upon his exercise of the "freedom of speech" protected from arbitrary governmental interference by the Constitution, and can be justified, if at all,

only as a valid regulation of the manner in which he exercised that freedom, not as a permissible prohibition on the substantive message it conveys. This does not end the inquiry, of course, for the First and Fourteenth Amendments have never been thought to give absolute protection to every individual to speak whenever or wherever he pleases, or to use any form of address in any circumstances that he chooses. In this vein, too, however, we think it important to note that several issues typically associated with such problems are not presented here. In the second place, as it comes to us, this case cannot be said to fall within those relatively few categories of instances where prior decisions have established the power of government to deal more comprehensively with certain forms of individual expression simply upon a showing that such a form was employed. This is not, for example, an obscenity case. Whatever else may be necessary to give rise to the States' broader power to prohibit obscene expression, such expression must be, in some significant way, erotic. Roth v. United States, 354 U.S. 476 (1957). It cannot plausibly be maintained that this vulgar allusion to the Selective Service System would conjure up such psychic stimulation in anyone likely to be confronted with Cohen's crudely defaced jacket.

....

In this regard, persons confronted with Cohen's jacket were in a quite different posture than, say, those subjected to the raucous emissions of sound trucks blaring outside their residences. Those in the Los Angeles courthouse could effectively avoid further bombardment of their sensibilities simply by averting their eyes.

....

At the outset, we cannot overemphasize that, in our judgment, most situations where the State has a justifiable interest in regulating speech will fall within one or more of the various established exceptions, discussed above but not applicable here, to the usual rule that governmental bodies may not prescribe the form or content of individual expression. Equally important to our conclusion is the constitutional backdrop against which our decision must be made. The constitutional right of free expression is powerful medicine in a society

as diverse and populous as ours. It is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity and in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests. See Whitney v. California, 274 U.S. 357, 375—377[1927] (Brandeis, J., concurring).

To many, the immediate consequence of this freedom may often appear to be only verbal tumult, discord, and even offensive utterance. These are, however, within established limits, in truth necessary side effects of the broader enduring values which the process of open debate permits us to achieve. That the air may at times seem filled with verbal cacophony is, in this sense not a sign of weakness but of strength. We cannot lose sight of the fact that, in what otherwise might seem a trifling and annoying instance of individual distasteful abuse of a privilege, these fundamental societal values are truly implicated. That is why '(w)holly neutral futilities ... come under the protection of free speech as fully as do Keats' poems or Donne's sermons,' Winters v. New York, 333 U.S. 507, 528[1948] (Frankfurter, J., dissenting), and why 'so long as the means are peaceful, the communication need not meet standards of acceptability,' Organization for a Better Austin v. Keefe, 402 U.S. 415, (1971).

Against this perception of the constitutional policies involved, we discern certain more particularized considerations that peculiarly call for reversal of this conviction. First, the principle contended for by the State seems inherently boundless. How is one to distinguish this from any other offensive word? Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us. Yet no readily ascertainable general principle exists for stopping short of that result were we to affirm the judgment below. For, while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.

Additionally, we cannot overlook the fact, because it is well illustrated by the episode involved here, that much linguistic expression serves a dual communicative function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well. In fact, words are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech has little or no regard for that emotive function which practically speaking, may often be the more important element of the

overall message sought to be communicated. Indeed, as Mr. Justice Frankfurter has said, '(o)ne of the prerogatives of American citizenship is the right to criticize public men and measures—and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation". Baumgartner V. United States, 322 U.S. 665, 673-674 (1944).

Finally, and in the same vein, we cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process. Indeed, governments might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views. We have been able, as noted above, to discern little social benefit that might result from running the risk of opening the door to such grave results."

(emphasis supplied)

37. In **Amish Devgan's** (supra) case, the Hon'ble Supreme Court was considering the case where a television anchor on a prominent news channels (News 18 India and CNBC Awaaz) had referred to a beloved saint, Moinuddin Chisti, as "Terrorist Chisti" and "Robber Chisti". The anchor had said that "Terrorist Chisti came. Robber Chisti came thereafter the religion changed. Their Lordships held that the said case impliedly referred to two communities, Hindus and Muslims. It would be material to refer to paragraphs 49, 51, 52, 56, 58, 60, 62, 64, 78, 79 & 87 which read thus :

> 49. On the aspect of content, Ramesh states that the effect of the words must be judged from the standard of reasonable, strongminded, firm and courageous men and not by those who are weak and ones with vacillating minds, nor of those who scent

danger in every hostile point of view. The test is, as they say in English Law, – 'the man on the top of a Clapham omnibus'. Therefore, to ensure maximisation of free speech and not create 'free speaker's burden', the assessment should be from the perspective of the top of the reasonable member of the public, excluding and disregarding sensitive, emotional and atypical. It is almost akin or marginally lower than the prudent man's test. The test of reasonableness involves recognition of boundaries within which reasonable responses will fall, and not identification of a finite number of acceptable reasonable responses. Further, this does not mean exclusion of particular circumstances as frequently different persons acting reasonably will respond in different ways in the context and circumstances. This means taking into account peculiarities of the situation and occasion and whether the group is likely to get offended. At the same time, a tolerant society is entitled to expect tolerance as they are bound to extend to others.

51. The 'context', as indicated above, has a certain key variable, namely, 'who' and 'what' is involved and 'where' and the 'occasion, time and under what circumstances' the case arises. The 'who' is always plural for it encompasses the speaker who utters the statement that constitutes 'hate speech' and also the audience to whom the statement is addressed which includes both the target and the others. Variable context review recognises that all speeches are not alike. This is not only because of group affiliations, but in the context of dominant group hate speech against a vulnerable and discriminated group, and also the impact of hate speech depends on the person who has uttered the words. The variable recognises that a speech by 'a person of influence' such as a top government or executive functionary, opposition leader, political or social leader of following, or a credible anchor on a T.V. show carries a far more credibility and impact than a

statement made by a common person on the street. Latter may be driven by anger, emotions, wrong perceptions or mis-information. This may affect their intent. Impact of their speech would be mere indifference, meet correction/criticism by peers, or sometimes negligible to warrant attention and hold that they were likely to incite or had attempted to promote hatred, enmity etc. between different religious, racial, language or regional groups. Further, certain categories of speakers may be granted a degree of latitude in terms of the State response to their speech. Communities with a history of deprivation, oppression, and persecution may sometimes speak in relation to their lived experiences, resulting in the words and tone being harsher and more critical than usual. Their historical experience often comes to be accepted by the society as the rule, resulting in their words losing the gravity that they otherwise deserve. In such a situation, it is likely for persons from these communities to reject the tenet of civility, as polemical speech and symbols that capture the emotional loading can play a strong role in mobilising. Such speech should be viewed not from the position of a person of privilege or a community without such a historical experience, but rather, the courts should be more circumspect when penalising such speech. This is recognition of the denial of dignity in the past, and the effort should be reconciliatory. Nevertheless, such speech should not provoke and 'incite' – as distinguished from discussion or advocacy – 'hatred' and violence towards the targeted group. Likelihood or similar statutory mandate to violence, public disorder or 'hatred' when satisfied would result in penal action as per law. Every right and indulgence has a limit. Further, when the offending act creates public disorder and violence, whether alone or with others, then the aspect of 'who' and question of indulgence would lose significance and may be of little consequence.

52. Persons of influence, keeping in view their reach, impact and authority they yield on general public or the specific class to which they belong, owe a duty and have to be more responsible. They are expected to know and perceive the meaning conveyed by the words spoken or written, including the possible meaning that is likely to be conveyed. With experience and knowledge, they are expected to have a higher level of communication skills. It is reasonable to hold that they would be careful in using the words that convey their intent. The reasonable-man's test would always take into consideration the maker. In other words, the expression 'reasonable man' would take into account the impact a particular person would have and accordingly apply the standard, just like we substitute the reasonable man's test to that of the reasonable professional when we apply the test of professional negligence. This is not to say that persons of influence like journalists do not enjoy the same freedom of speech and expression as other citizens, as this would be grossly incorrect understanding of what has been stated above. This is not to dilute satisfaction of the three elements, albeit to accept importance of 'who' when we examine 'harm or impact element' and in a given case even 'intent' and/or 'content element'.

56. Our observations are not to say that persons of influence or even common people should fear the threat of reprisal and prosecution, if they discuss and speak about controversial and sensitive topics relating to religion, caste, creed, etc. Such debates and right to express one's views is a protected and cherished right in our democracy. Participants in such discussions can express divergent and sometimes extreme views, but should not be considered as 'hate speech' by itself, as subscribing to such a view would stifle all legitimate discussions and debates in public domain. Many a times, such discussions and debates help in understanding different view-points and bridge the gap. Question

is primarily one of intent and purpose. Accordingly, 'good faith' and 'no legitimate purpose' exceptions would apply when applicable.

58. On the question of harm, the legislations refer to actual or sometimes likely or anticipated danger, of which the latter must not be remote, conjectural or farfetched. It should have proximate and direct nexus with the expression 'public order' etc. Otherwise, the commitment to freedom of expression and speech would be suppressed without the community interest being in danger. In the Indian context, the tests of 'clear and present danger' or 'imminent lawless action' unlike United States, are identical as has been enunciated in the case of Shreya Singhal. The need to establish proximity and causal connection between the speech with the consequences has been dealt with and explained in Dr. Ram Manohar Lohia in great detail. In the case of actual occurrence of public disorder, the cause and effect relationship may be established by leading evidence showing the relationship between the 'speech' and the resultant 'public disorder'. In other cases where public disorder has not occurred due to police, third party intervention, or otherwise, the 'clear and present danger' or 'imminent lawless action' tests are of relevance and importance. 'Freedom and rational' dictum should be applied in absence of actual violence, public disorder etc. Further, when reference is to likelihood, the chance is said to be likely when the possibility is reasonably or rather fairly certain, i.e. fairly certain to occur than not. Therefore, in absence of actual violence, public disorder, etc., something more than words, in the form of 'clear and present danger' or 'imminent lawless action', either by the maker or by others at the maker's instigation is required. This aspect has been examined subsequently while interpreting the penal provisions.

60. We would now interpret Section 153A of the Penal Code, which reads as under: ....

62. The Calcutta High Court in P.K. Chakravarty had delved into the question of intention and had observed that the intention as to whether or not the person accused was promoting enmity is to be collected from the internal evidence of the words themselves, but this is not to say that other evidence cannot be looked into. Likewise, while examining the question of likelihood to promote ill-feelings the facts and circumstances of that time must be taken into account. Something must be known of the kind of people to whom the words are addressed. Words will be generally decisive, especially in those cases where the intention is expressly declared if the words used naturally, clearly or indubitably have such tendency. Then, such intention can be presumed as it is the natural result of the words used. However, the words used and their true meaning are never more than evidence of intention, and it is the real intention of the person charged that is the test. The judgment rejects the concept of constructive intention. Similarly, the Lahore High Court in Devi Sharan Sharma had observed that intention can be deduced from internal evidence of the words as well as the general policy of the paper in which the concerned article was published, consideration of the person for whom it was written and the state of feeling between the two communities involved. In case the words used in the article are likely to produce hatred, they must be presumed to be intended to have that effect unless the contrary is shown. The Bombay High Court in Gopal Vinayak Godse has observed that the intention to promote enmity or hatred is not a necessary ingredient of the offence. It is enough to show that the language of the writing is of the nature calculated to promote feelings of enmity or hatred, for a person must be presumed to intend the

natural consequences of his act. The view expressed by the Bombay High Court in Gopal Vinayak Godse lays considerable emphasis on the words itself, but the view expressed in P.K. Chakravarthy and Devki Sharma take a much broader and a wider picture which, in our opinion, would be the right way to examine whether an offence under Section 153A, clauses (a) and (b) had been committed. The ordinary reasonable meaning of the matter complained of may be either the literal meaning of the published matter or what is implied in that matter or what is inferred from it. A particular imputation is capable of being conveyed means and implies it is reasonably so capable and should not be strained, forced or subjected to utterly unreasonable interpretation. 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.

64. In the context of Section 153A(b) we would hold that public tranquillity, given the nature of the consequence in the form of punishment of imprisonment of up to three years, must be read in a restricted sense synonymous with public order and safety and not normal law and order issues that do not endanger the public interest at large. It cannot be given the widest meaning so as to fall foul of the requirement of reasonableness which is a constitutional mandate. Clause (b) of Section 153A, therefore, has to be read accordingly to satisfy the constitutional mandate. We would interpret the words 'public tranquillity' in clause (b) would

mean ordre publique a French term that means absence of insurrection, riot, turbulence or crimes of violence and would also include all acts which will endanger the security of the State, but not acts which disturb only serenity, and are covered by the third and widest circle of law and order. Public order also includes acts of local significance embracing a variety of conduct destroying or menacing public order. Public Order in clause (2) to Article 19 nor the statutory provisions make any distinction between the majority and minority groups with reference to the population of the particular area though as we have noted above this may be of some relevance. When we accept the principle of local significance, as a sequitur we must also accept that majority and minority groups could have, in a given case, reference to a local area.

78. We have already reproduced relevant portions of the transcript of the debate anchored by the petitioner. It is apparent that the petitioner was an equal co-participant, rather than a mere host. The transcript, including the offending portion, would form a part of the ‘content’, but any evaluation would require examination and consideration of the variable ‘context’ as well as the ‘intent’ and the ‘harm/impact’. These have to be evaluated before the court can form an opinion on whether an offence is made out. The evaluative judgment on these aspects would be based upon facts, which have to be inquired into and ascertained by police investigation. ‘Variable content’, ‘intent’ and the ‘harm/impact’ factors, as asserted on behalf of the informants and the State, are factually disputed by the petitioner. In fact, the petitioner relies upon his apology, which as per the respondents/informants is an indication or implied acceptance of his acts of commission.

79. Having given our careful and in-depth consideration, we do not

think it would be appropriate at this stage to quash the FIRs and thus stall the investigation into all the relevant aspects. However, our observations on the factual matrix of the present case in this decision should not in any manner influence the investigation by the police who shall independently apply their mind and ascertain the true and correct facts, on all material and relevant aspects. Similarly, the competent authority would independently apply its mind in case the police authorities seek sanction, and to decide, whether or not to grant the same. Same would be the position in case charge-sheet is filed. The court would apply its mind whether or not to take cognisance and issue summons. By an interim order, the petitioner has enjoyed protection against coercive steps arising out of and relating to the program telecast on 15.06.2020. Subject to the petitioner cooperating in the investigation, we direct that no coercive steps for arrest of the petitioner need be taken by the police during investigation. In case and if charge-sheet is filed, the court would examine the question of grant of bail without being influenced by these directions as well as any findings of fact recorded in this judgment.

87. In view of the aforesaid discussion, we decline and reject the prayer of the petitioner for quashing of the FIRs but have granted interim protection to the petitioner against arrest subject to his joining and cooperating in investigation till completion of the investigation in terms of our directions in paragraphs 79 and 85 above. We have however accepted the prayer of the petitioner for transfer of all pending FIRs in relation to and arising out of the telecast/episode dated 15th June 2020 to P.S. Dargah, Ajmer, Rajasthan, where the first FIR was registered. On the third prayer, we have asked the concerned states to examine the threat perception of the petitioner and family members and take appropriate steps as may be necessary. “

(emphasis supplied)

38. We may also refer to the decisions of this Court in case of **'Joseph Bain'** (supra). It is the submission of learned Counsel for the Petitioner that despite strong and extreme language used against the Muslim community, and despite the tense circumstances prevailing at the time when the said editorials were written, this Court thought it fit not to direct the police to register an FIR against the editor of the 'Saamna' under Section 153A of IPC for writing the said editorials. This Court observed thus :

> 23. If we take into consideration the article as a whole, it is clear that the criticism is against anti-national or traitorous section of Muslims and their selfish leaders who are creating rift between Hindus and Muslims and in the aforesaid portion reference is also made that Muslims should understand the sentiments of Hindu majority and merge themselves in the national mainstream instead of being carried away by the selfish leaders who were prompting to attack Hindus. The Central Government is also castigated for dissolving the B.J.P. Government in U.P. The entire thrust of this article is against the Congress Government for adopting the lukewarm policy against the anti-national Muslims for the sake of votes, which according to the editorial ultimately resulted in communal riots. The readers of the editorial are not likely to develop hatred, spite or ill-will against Muslims as a whole but may develop hatred towards those Muslims indulging in anti-national activities. The criticism is against those Muslims who are indulging in the act of violence on the streets and desecrating Hindu deities and temples and they are referred to as traitors, because, according to the editor, no religion, no country, no God, no culture can

approve it. The criticism is not against the Muslims as a whole but only against anti-social elements in the Muslim community.

31. After going through the portion relied upon by the petitioners and the respondents, it is clear that the whole criticism is against the minorities who indulge in anti-national traitorous activities and since the Government is not taking proper action against these anti-national members of the minority communities such as Muslims, Sikhs, Christians and the like, the Hindus are held at ransom. The editorial is a criticism against anti-national activities of the members of the minority community and not against the minority community as a whole and, therefore, this article does not come within the ambit of section 153A and 153B of the Code.

40. The aforesaid article, when read an a whole, refers to the activities of Muslim traitors who were destroying culture, tradition, piety, family, law, truth, affection, public administration and such other cherished values and showing their cruelty before the police and army. The article also criticised tendency of these Muslims who treat religion as first and nation as secondary. The main thrust of the article is against the lukewarm attitude shown by the S.R.P. and police at the behest of the Government when in the riots persons were killed. This also in our opinion does not attract provisions of section 153A and 153B of the Code.

45. After going through all the aforesaid articles which were published from time to time after the fall of Babri Masjid and in the wake of riots which broke out in the areas predominantly occupied by Muslims, it appears that criticism is levelled against anti-national Muslims, who at the behest of Pakistani agents,

poured poison in the minds of local Muslims and developed hatred in their minds against Hindus in Bombay which ultimately resulted in unprecedented riots. According to these articles, by the fissiparous mentality created in the minds of Muslims by the aforesaid anti-social elements, Muslims started drifting from the mainstream of life. According to the said editorials, had the Government curbed the anti-national activities of the said Muslims, this would not have resulted in ugly situation. These articles further observed that the appeasing attitude of the Government towards the minority for getting votes created dangerous situation in India. These articles do not criticise Muslims as a whole but criticise Muslims who were traitors to India. This attitude of the Government, according to these articles, provided Pakistan an opportunity to create explosive situation like atom bomb in India. The main thrust of these articles is against anti-national Muslims and attitude of police and the Government. In these articles reference is also made to respect holy Koran which, according to the editor, not only belongs to the Muslims but to the whole humanity. In the said editorials appeal was also made to the Muslims to forget the past and to join the mainstream of public life in India. It is true that in some of these articles due to the emotional outburst high-flown and caustic language is used but this per se will not fall within the mischief of sections 153A and 153B of the Code.

50. We have already expressed that these articles do not come within the mischief of section 153A and 153B of the Code. We are further of the opinion that looking at the recent monstrous riots and the result thereof, both the communities must have realised that path of ill-will, spite and hatred against each other will benefit none but surely destroy both. Taking the experience from the past events, both the communities have started

forgetting the ill feelings thereby creating communal harmony and leading the life as a part of the mainstream of this country towards prosperity and, therefore, from this point of view also, it is not desirable to reopen the old issue afresh. With these observations, we dismiss the criminal writ petition, Rule discharged."

(emphasis supplied)

39. A reference to the observations of Division Bench of this Court in **Rajaram Shankar Patwardhan's** case is also material. This Court held thus :

11. It is also not in dispute that the thought expressed by the writer was immediately countered by another writer. In our opinion, this was a proper way to counter a thought by another thought. It is also accepted way of a progressive society i.e. to counter one thought if it is lacking in study by another thought which is based on a better research. It will not be out of place for us to refer an often quoted principle in Sanskrit read as "वादे वादे जयते तत्व बोधा". It can be loosely translated as if one submission is countered by another submission, it helps to understand the principle in a better way and there cannot be any criticism for accepting such a method.

12. In so far as attracting the provisions, Mr. Paranjape was absolutely justified in submitting that attracting Section 153-A was a serious error committed. It may not be out of place to refer to the observations of the Hon'ble Apex Court while dealing with this Section in the Judgment Balwant Singh and Anr. V/s State of Punjab, reported in AIR 1995 Supreme Court 1785. Hon'ble Apex Court observed thus :

> "In so far as the findings under Section 153A of Indian Penal Code is concerned it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, language or regional groups or castes or communities. It is only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or affect public tranquillity, that 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 153A, I. P. C. and the prosecution has to prove the existence of mens rea in order to succeed."

As the matter relates to epic of Mahabharata and as the article refers to its source, it will not be out of place to refer the work under title "Sampoorna Mahabharata", Pro. Bhalba Kelkar. It also refers to as Adiparv Adhyay 1st and then there is also reference to Adhyay 105th . Thus, what reveals is, this source material referred to by the writer of the article is not his own creation. If it is not the own creation of the writer if it is a reference to a source material then Mr. Paranjape the learned Counsel for the applicant was wholly justified in submitting that lodgment of the report and for an unsustainable material attracting criminal provisions and asking the applicant to face a criminal prosecution would nothing but an abuse of process of law. Considering all these facts we are of the opinion that the counsel for the applicant had made out a case for grant of relief as prayed in the application.

13. On the backdrop of these facts, we are unable to accept the

submission of Mr. Thombre that writer of the article misused the freedom of expression."

(emphasis supplied)

40. So far as under what circumstances FIR can be quashed has been authoritatively dealt with by the Hon'ble Supreme Court in the case of **Bhajanlal** (supra). Para 102 which is relevant reads thus :

> 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.

(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."

41. Whether the FIR against the Petitioner in the present case deserves to be quashed will have to be considered on the touchstone of the decisions referred to hereinabove. Some of the propositions which can be culled out and need to be considered

in the contextual facts of the present case are thus :-

(i) It is not an absolute proposition that one must wait for investigation to be completed before quashing FIR under Section 482 of Cr.PC as the same would depend upon the facts and circumstances of each case. (Refer Manzar Sayyed Khan & Bhajanlal's case.)

(ii) The intention of the accused must be judged on the basis of the words used by the accused along with surrounding circumstances. (Refer Manzar Sayyed Khan's case)

(iii) The statement in question on the basis of which the FIR has been registered against the accused must be judged on the basis of what reasonable and strong minded persons will think of the statement, and not on the basis of the views of hypersensitive persons who scent danger in every hostile point of view. (Refer Manzar Sayyed Khan's case)

(iv) In order to constitute an offence under Section 153A of the IPC, two communities must be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either Section

153A. (Refer Bilal Ahmed Kaloo's case)

(v) The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153A of IPC and prosecution has to prove prima facie the existence of mens rea on the part of the accused. (Refer Balwant Singh's case)

(vi) An influential person such as “top government or executive functionary, opposition leader, political or social leader of following or a credible anchor on a T.V. show” carries more credibility and has to exercise his right to free speech with more restraint, as his/her speech will be taken more seriously than that of a “common person on the street”. (Refer Amish Devgan's case)

(vii) A citizen or even an influential person is under no obligation to avoid a controversial or sensitive topic. Even expressing an extreme opinion in a given case does not amount to hate speech. (Refer Amish Devgan's case)

(viii) The Apex Court has reiterated the test of imminence in Amish Devgan's case by holding that the likelihood of harm arising out of the accused's speech must not be remote, conjectural or far-fetched.

42. Let us test the Petitioner's case in the light of these principles laid down in various judgments referred hereinabove We have gone through the Petitioner's tweet and video recording which was reposted carefully and our observations are thus :

(a) The tweet was made on 14/04/2020 during the period of a nationwide lockdown declared from 25/03/2020. The nation was battling with one of the worst crisis befallen on mankind. The pandemic had infused fear, terror, chaos and confusion in the minds and hearts of the people. The crowd had gathered near the Bandra railway station due to a rumour circulated that the train services are facilitated by the government for ensuring the safe return of the people to their respective native place. The police machinery was faced with the responsibility of controlling the crowd of such huge magnitude who had assembled at Bandra Railway station and accordingly took steps to ensure that there is no breach of law and order. The police machinery realising the sensitivity of the situation asked a gentleman to address the

crowd and thereby pacify them. It appears that someone made a video recording of the crowd which had gathered and that of the person addressing the crowd. The said video which was created by an unknown person was reposted by the Petitioner on her twiteer feed. While reposting the video, the Petitioner tweeted the statement which is the subject matter of the offence.

(b) The Petitioner is not the author of the video. She has merely reposted it on her twitter feed. She posted a tweet expressing her opinion thereby criticising the member in the crowd who blamed the Prime Minister of India for the outbreak of the pandemic. It is a matter of record that no offence has been registered against the author of the video which the Petitioner reposted on her twitter feed. What we find is the Petitioner has expressed her disapproval to the view point of the person in the crowd who blamed the Prime Minister of India for the pandemic. Learned Senior Advocate for the State wants us to read too many things between the lines to come to the conclusion that an offence under Section 153A IPC is made out. The concern of the State Police machinery to control the situation though justified, but the approach in registering the FIR for the comments made on the twitter feed by the Petitioner on the apprehension that the same may lead to promoting hatred or enmity between different groups on the ground of religion or that the Petitioner has

committed an act which is prejudicial to the maintenance of harmony between different religious groups, is too far fetched and remote. The tweet in question, if judged on the basis of what a reasonable and strong minded person will think of it, leaves little manner of doubt in our mind that the same is only expressing a hostile point of view. The Respondent's approach towards the tweet is hypersensitive and over cautious thereby trying to scent danger in the hostile point of view expressed by the Petitioner.

43 We also need to appreciate the surrounding circumstances. We find that the video was already in circulation. The Petitioner merely reposted the video on her twitter feed objecting the view point of the person seen in the video. No doubt, the Petitioner's tweets are followed by a number of persons. However, it is difficult to form an opinion of likelihood of harm arising from the tweet made by the Petitioner as the same is too remote, conjectural or far-fetched. The intention on the part of the Petitioner is obviously to counter the point of view expressed by the person blaming the Prime Minister in the video. The intention on the part of the Petitioner can by no stretch of imagination be said to cause disorder or incite people to violence which is sine qua non for the offence under section 153A of the

IPC. It is also not the case of the Respondents that there was disturbance of law and order or of public order or peace and tranquillity as a result of tweet made by the Petitioner. Though the police machinery had ample opportunity to investigate, nothing has been placed on record to indicate that the tweet led to any such disturbance. The right to express one's views is a protected and cherished right in our democracy. Merely because the point of view of the Petitioner is extreme or harsh will not make it a hate speech as it is only expressing a different point of view. Whether the Petitioner intended to commit offence under Section 153A of IPC is to be collected from the internal evidence of the words themselves, the materials on record and the facts and circumstances of that time which needs to be taken into account. It is material to appreciate that a large number of persons had gathered at railway station to leave for their native place. The police requested one gentleman to pacify the crowd. The incident was recorded by some one on video and one person in the crowd shouted that Covid - 19 pandemic is not an act of God but has been brought out by Prime Minister of India. The Petitioner's objection was to this point of view. Merely because a reference is made to Bandra Masjid location in the tweet by the Petitioner would not attract the provisions of Section 153A of IPC. The prime intent of the Petitioner is obviously to criticize and

counter the view point of the person in the video who was blaming the Prime Minister of India for the spread of virus. No offence has been registered against the author of the video or the person blaming the Hon'ble Prime Minister. There is no disturbance reported immediately after the tweet is posted or even during the course of investigation as a result of the tweet.

44. We do find force in the submission of learned Senior Advocate Shri Mohite for the State that the police machinery was faced with the responsibility of controlling a crowd of such huge magnitude which had assembled at the Bandra Railway Station pursuant to a rumour that the train services are facilitated by the Government to ensure safe return of all concerned to their native place. The pandemic had started wreaking havoc. Migrants were anxious to go back to their native place as all hell had broken loose due to the pandemic. The people were restless, anxious and in panic. Accordingly the police requested a gentleman in the crowd to pacify them. The police machinery proceeded in the correct direction trying to control & pacify the crowd. It was their responsibility to control the situation and ensure maintenance of law and order. Keeping a check on the posts made on the social media platform to ensure the situation does not go out of hand was one such

measure. The video and post in question was noticed with some degree of promptitude. Apprehending that the post may have the effect a deteriorating law & order situation, the FIR was registered against the Petitioner under Section 153A of IPC.

45. Assuming that the said tweet is an extreme view expressed in retaliation to the view expressed by one of the member of the crowd who was blaming the Prime Minister of India for the outbreak of the pandemic, the said tweet has still to be judged from the standpoint of what the reaction of a strong minded, reasonable or a prudent person would be. It is material to note that reading of the contents of the tweet would reveal that neither any community nor any religion is named. Nothing substantial has been brought on record by the prosecution to hold that because of the said tweet, hatred or enmity was created in between two communities. If the test of a strong or a prudent person judging the contents of the said tweet is applied, by no stretch of imagination it can be said that the said tweet created hatred or enmity between the two groups of communities. Upon reading of the contents of the said tweet, it is difficult to arrive at the conclusion that the Petitioner has mens rea to commit alleged offence under section 153A of the IPC.

46. We do appreciate the efforts on the part of the police machinery in taking appropriate steps in pacifying the crowd and keeping a close vigil on the social media platform to ensure that the situation does not go out of hand as a result of objectionable videos or posts, however, the action of registering the instant FIR, even if all the materials are taken at their face value and accepted do not prima facie constitute any offence or make out a case against the Petitioner.

47. Having given our careful and in-depth consideration, we find this is fit case to quash the FIR filed against the Petitioner. The Petition therefore succeeds and is accordingly allowed in terms of prayer clause (a) which reads thus :

> (a) Issue appropriate Writ, Order or Direction, thereby calling for the records and proceedings of FIR No. 97 of 2020 dated 15.04.2020 registered with Azad Maidan Police Station, Mumbai for offences punishable u/s 153A of the IPC and for that purpose issue necessary orders and after going through the contents of the aforesaid FIR be pleased to quash and set aside the aforesaid FIR."

48. Rule is made absolute in the above terms. The Writ Petition stands disposed of accordingly.

(M.S.KARNIK, J.) **(S.S.SHINDE, J.)**