REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO.154 OF 2020

VINOD DUA …PETITIONER

VERSUS

UNION OF INDIA & ORS. …RESPONDENTS

J U D G M E N T

UDAY UMESH LALIT, J.

1. This petition under Article 32 of the Constitution of India prays for following principal reliefs:-

> "a. Quash FIR No.0053 dated 06.05.2020 registered at Police Station Kumarsain, District Shimla, Himachal Pradesh.
>
> b. Direct that henceforth FIRs against persons belonging to the media with at least 10 years standing be not registered unless cleared by a committee to be constituted by every State Government, the composition of which should comprise of the Chief Justice of the High Court or a Judge designated by him, the leader of the Opposition and the Home Minister of the State."

2. FIR No.0053 dated 06.05.2020 was registered pursuant to Complaint made by respondent No.3 herein to the following effect:-

> "On 30th March, 2020, Mr. Vinod Dua, in his show namely The Vinod Dua Show on YouTube, has made unfounded and bizarre allegations (details of particular moments are provided below) by stating following facts at 5 minutes and 9 seconds of the video, he has stated that Narendra Modi has used deaths and terror attacks to garner votes. At 5 minutes and 45 seconds of the video, he claims that the government does not have enough testing facilities and has made false statements about the availability of the Personal Protective Kits (PPE) and has stated that there is no sufficient information on those. Further, he also went on to state that ventilators and sanitizer exports were stopped only on 24th March 2020. A true copy of the video link is: https:/ /www.youtube.com/watch?vvijFD_tgvv8. That the said allegations are false and the claims are bizarre and unfounded. Mr. Vinod Dua has spread false and malicious news by stating that the PM has garnered votes through acts of terrorism. This directly amounts to inciting violence amongst the citizens and will definitely disturb public tranquillity. This is an act of instigating violence against the government and the Prime Minister. He also creates panic amongst the public and disturbs public peace by trying to spread false information, such as, the government does not have enough testing facilities which is absolutely false. The government has sufficient facilities to curb the pandemic and have been taking all the measures to control the pandemic. By making such false statements, Mr. Vinod Dua spread fear amongst the people. This video will only create a situation of unrest amongst the public which will result in panic and people not obeying the lockdown to come out and hoard essentials which is absolutely unnecessary. Mr. Vinod Dua has circulated these rumours with the intent to defeat the Lockdown by creating an impression that there is a complete failure of the institution and it will become hard to survive this lockdown, if not acted upon immediately. It is unfortunate that during such a pandemic, which is of such a magnitude, instead of helping out the citizens and encouraging them to stay at home, the show and the host,

> Mr. Vinod Dua, is only interested in raising his show's TRP and making it successful. The rumours were spread with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public, whereby any person may be induced to commit an offence against the state or against the public tranquillity. Since the matter relates to Public health, considering the gravity and seriousness of the matter, this dishonest and fraudulent act of the Mr. Vinod Dua should be taken with utmost seriousness. The aforesaid act of Mr. Vinod Dua is an offence punishable under Sections 124-A, 268, 501 and 505 of the Indian Penal Code, 1860 (IPC). Unless strict action is taken, it will result in unrest in public and go against public tranquillity. Hence, you are requested to take strict appropriate legal action against Mr. Vinod Dua and punish him accordingly."

3. The FIR dated 06.05.2020 thus pointedly referred to two segments in the talk show uploaded on 30.03.2020 – one at 5 minutes 9 seconds and the other at 5 minutes 45 seconds and generally dealt with the drift of the assertions made by the petitioner in said talk show to submit that the actions on part of the petitioner amounted to offences punishable under penal provisions referred to in the FIR. The transcript of the relevant episode of the talk show has been placed on record and the translation of the relevant portions is :-

> "At present I am talking about the ongoing corona virus and whatever has happened in its context – how was our preparedness, when we were alerted and despite which why we were in slumber. When I refer to WE then I refer to the government. I present a small analysis on which a few things have been stated by P. Chidambaram in an article in the

Indian Express, some of this we have also seen and you understand all of the rest very well. …..

Now, the national lockdown, desh bandhi, note bandhi, GST are the three big events. Our work as media, we do not stoop, we are not darbari, we are not from the government, our job is not to denigrate, our job is not also to criticize, our job is to do critical appraisal of government's work. We do not need anything from the government or anyone's complaisance. Media has to do this work but unfortunately most of the media is towing the line of the government or their stoogas. They look for support in everything to turn everything into an event of the Pradhan Sewak and to tout that as a big success. In the case of attacks on India on Pathnakot and Pulwama the same were used as political events to garner votes, surgical strikes were also used as gain politically. The air strikes by India on Balakot were also used as means of getting votes. To seek votes by turning everything into an event has become the hallmark of this government, this is our call of duty and our *dharma* to present these before you, so we are saying these.

Further, our biggest failure has been that we do not have enough facilities to carry out testing. Undoubtedly, ICMR and Health Ministry maintain that corona in India is still in 2nd stage and has not reached in 3rd stage when community transmission takes place. At the present juncture India needs 7 lakh PPE suits, 6 lakh N95 masks and 8 crore masks of three ply. Till now we do not have any information how many we have and how many will become available by when. The ventilators needed in other countries and in India, respiratory devices and sanitizers were being exported till 24 March instead of keeping these for use in our country. Supply chains got disrupted due to blockage of roads and now it is being heard that transportation of essential goods has been allowed. It is not difficult to imagine that when the supply chains have been closed, when the shops are closed, some people had gone to the extent of fearing food riots which have not happened in our country could happen. Therefore the government is now taking steps which should have been taken at least 15 days earlier. On 11 February, ICMR had forewarned, later Rahul Gandhi did the same by writing a letter on 12 February and again 13 February but the government kept sleeping.

> Now, the migrant labour which is a huge issue, the people who leave their distant villages to earn their livelihoods here, who are the backbone of the cities, who help in running our lives, our drivers, our daily wagers, construction workers, tailors, all those who do small odd jobs and somehow send money back home. There are certain states like Bihar which also run on money order economy where it caused huge disruption and who started returning home. When people started returning from Mumbai on 10 March, that should have been a big signal for the government about the effect the complete lockdown in the whole country can bring about but no lessons were learnt. Besides, police did not get any instructions about how to handle this, the face of brutality and inhumanity of the police was seen and now the face of the police is also seen while distributing food and also their face of shaming those not following the lockdown. These steps could have been taken earlier also because using force is not the only way of the police.

4. Certain factual developments that occurred after the registration of the FIR were noted in the Order dated 14.06.2020 passed by this Court as under:-

> "A Notice for Appearance dated 11.06.2020 was issued by the office of Station House Officer, Police Station Kumarsain, District Shimla, Himachal Pradesh, under Section 160 Cr.P.C. to the following effect:
>
> > "A Case FIR No.53/2020 Dated 06.05.2020 U/s 124A, 268, 501, 505 IPC has been registered in Police Station Kumarsain, Distt. Shimla, HP on the complaint of Sh. Ajay Shyam, Vill & PO Kiara, Tehsil Theog, Distt. Shimla HP against (You) Mr. Vinod Dua Journalist, HW News Network. In above said case your presence is required for interrogation.

> So you are therefore directed to join investigation at Police Station Kumarsain on or before 13/06/2020 at 10 am sharp."

A response to the above notice was sent by the petitioner on 12.06.2020 stating *inter alia*:

> "I have received your notice dated 11.06.2020 seeking my physical presence for the interrogation of FIR dated 06.05.2020, on 13.06.2020 before the police station in Kumarsain, Himachal Pradesh.
>
> I wish to bring to your notice as per Himachal Pradesh covid guidelines dated 11.05.2020, any person coming from the red zone is directed to be in institutional quarantine for a period of 14 days. Since I reside in New Delhi which is currently a red zone, I would be forced to be in quarantine for a period of 14 days.
>
> Further, I wish to bring to your kind notice that I am 66 plus years old. Therefore, as per MOH guidelines, all citizens of 65 plus age are asked not to travel due to health safety risks.
>
> Further I suffer from Thalassemia minor with Iron deficiency anaemia, pancytopenia (low red & white blood cell and low platelet count), chronic liver disease with portal hypertension & splenomegaly, diabetes and hypothyroidism. I also have oesophageal varices with a high risk of bleeding. Therefore doctors have stated that stepping out of my house would be life endangering. I am attaching my medical certificate herewith.
>
> Meanwhile, I would join the investigation through email or any other online mechanism."

While issuing notice in the petition, the Order dated 14.06.2020 recorded further: -

> "Mr. Vikas Singh, learned Senior Counsel appearing for the petitioner submitted that the Himachal Pradesh Police had

contacted the petitioner day before yesterday in connection with the investigation in the crime referred to above.

Considering the circumstances on record, we deem it appropriate to direct as under:

(a) Pending further orders, the petitioner shall not be arrested in connection with the present crime;

(b) However, the petitioner in terms of the offer made by him in his communication dated 12.06.2020, shall extend full cooperation through Video Conferencing or Online mode; and

(c) The Himachal Pradesh Police shall be entitled to carry on the investigation including interrogation of the petitioner at his residence after giving him prior notice of 24 hours and complying with the Social Distancing norms prescribed during Covid-19 Pandemic.

The affidavit in reply filed on behalf of the State shall indicate the steps taken during investigation and a complete Status Report shall be filed before the next date of hearing. The concerned Investigating Officer shall remain personally present in case the open Court hearing is resumed by this Court or shall be available in case the proceedings are taken up through Video Conferencing mode."

5. Some of the grounds raised in the instant writ petition relating to the prayers quoted hereinabove are:

"A. Because the contents in the video is pure and simple critical analysis by the Petitioner of the functioning of the Government and cannot by any stretch of imagination be said to be offences under Sections 124-A, 268, 501, 505 of IPC.

B. Because the decisive ingredient for establishing the offence of sedition under Section 124-A IPC is the doing of certain acts which would bring to the Government established by law in India hatred or contempt etc. which

would incite violence or create public disorder. In the present case, there is not even a suggestion that the Petitioner did anything against the Government of India or any other Government of the State.

R. Because seeking quashing of the FIR dated 06.05.2020 is part prayer, the petitioner through this petition is also seeking guidelines from this Hon'ble Court in respect of lodging of FIRs against persons belonging to the media of a particular standing as done in the case of medical professionals vide judgment in Jacob Mathew v. State of Punjab (2005) 6 SCC 1 para 51, 52 affirmed by the Constitution Bench Judgment in Lalita Kumari v. Government of Uttar Pradesh and others (2014) 2 SCC 1 para 115."

6. The affidavit in reply filed on behalf of the State referred to Sections 52 and 54 of the DM Act[1] as under:

"At this juncture, it may be noticed that the entire world is passing through an unprecedented international crises in the form of a pandemic. India also is no exception. In case of a pandemic, any false news necessarily have a tendency of creating panic and, therefore, the Disaster Management Act provides for certain offences and penalties. Sections 52 and 54 of the Disaster Management Act read as under:-

"**Section 52. Punishment for false claim.-**

Whoever knowingly makes a claim which he knows or has reason to believe to be false for obtaining any relief, assistance, repair, reconstruction or other benefits consequent to disaster from any officer of the Central Government, the State Government, the National Authority, the State Authority or the District Authority, shall, on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.

[1] The Disaster Management Act, 2005

> **Section 54. Punishment for false warning**.-
>
> Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic, shall on conviction, be punishable with imprisonment which may extend to one year or with fine."

Thereafter, the affidavit indicated following steps taken by the Investigating machinery:

> "Having found that complaint disclosed cognizable offence, the FIR was registered. In respectful submission of the respondent, since a FIR discloses prima facie commission of cognizance offence, no interference may be warranted.
>
> That after registration of FIR, on 07.05.2020 the complainant was called in the Police Station but he did not appear as he was out of station. On 08.05.2020 complainant joined the investigation in the Police Station and produced one DVD containing telecast dated 30.03.2020 as referred in the FIR which was taken into possession by the Investigating Officer through seizure memo and statement of Sh. Ajay Shyam was recorded u/s 161 Cr.P.C.
>
> That on 11.05.2020, Investigating Officer visited Cyber Crime Police Station from where Notice u/sec 91 Cr.P.C. was sent to Google and YouTube through e-mail for obtaining information in respect to URL of the channel and URL of the post."

7. The original complainant (Respondent No.3) stated in his response as under:

> "It is submitted that, on 30.03.2020, the petitioner in his show, 'The Vinod Dua Show' telecasted on You Tube in Episode No.255 made false allegations regarding preparedness for the pandemic Covid-19 which were clearly in violation of Sections 124-A, 268, 501 and 505 IPC. The entire content/transcript of the episode has been reproduced in the Writ Petition at pages 45 onwards at Annexure A-2.

> It is submitted that, on 21.04.2020, when the respondent was surfing on the internet on his mobile that, he had the occasion to watch the said alleged video of the petitioner. He strongly felt that the contents of the video had a tendency to create disturbance of public peace against the government established by law.
>
> ……
>
> It is submitted that, in the present case, prima facie the offences u/s 124-A, 268, 501 and 505 of the IPC are clearly made out and more serious offences will emerge once the material supplied by the answering respondent is investigated, and therefore, there is no ground for quashing the present FIR. If the statements in the video are seen in its entirety, then the mala fide intention of the petitioner is apparent and all is being said to incite people and create disaffection and hatred in the minds of the people against the Government of India and that too during these difficult times of pandemic Covid-19."

Respondent No.3 then referred to the other episodes of talk show of the petitioner uploaded on 02.03.2020, 31.03.2020, 01.04.2020 and 01.06.2020 to emphasize the alleged tendency on part of the petitioner of making statements which were devoid of truth.

8. The Status Report placed for perusal of this Court in pursuance of the order dated 14.06.2020, *inter alia*, gave details about HW News owned by Theo Connect Private Ltd.

9. Appearing for the petitioner, Mr. Vikas Singh, learned Senior counsel submitted: -

A) The statements in the FIR that, "Hon'ble Prime Minister used threats and terror acts to garner votes"; and "Prime Minister garnered votes through act of terrorism" were factually incorrect. No such assertions were made by the petitioner.

B) The basic allegations in the FIR were required to be seen in the light of the law laid down by this Court in ***Kedar Nath Singh vs. State of Bihar***[2] and subsequent cases. Viewed thus, the provisions of Section 124A of the IPC[3] would not get attracted at all.

C) As a journalist, the petitioner was entitled to and did nothing more than critical analysis of the functioning of the Government.

D) The ingredients constituting offences under Sections 501 and 505 of the IPC[3] were also not established.

[2] (1962) Supp. 2 SCR 769
[3] The Indian Penal Code, 1860

E) Consequently, the criminal proceedings initiated against the petitioner being abuse of the process and being violative of the fundamental rights guaranteed under the Constitution of India, the same be quashed.

10. In support of the second prayer made in the petition, Mr. Singh submitted: -

In ***Jacob Mathew v. State of Punjab and Another***[4], this Court issued certain guidelines with regard to prosecution of Medical Professionals accused of rashness or negligence while discharging their professional duties; which decision was not only affirmed by the Constitution Bench of this Court in ***Lalita Kumari v. Government of Uttar Pradesh and Others***[5] but this Court went on to explain that a preliminary inquiry could validly be insisted upon in certain categories of cases. The case of journalists as a category be considered on similar lines, so that the journalists can, without any hindrance or fear of unwarranted prosecution fulfil their duties. The protection suggested in the second prayer would afford and ensure protection against such unwarranted prosecutions.

11. Mr. Tushar Mehta, learned Solicitor General of India appeared for State of Himachal Pradesh and submitted: -

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[4] (2005) 6 SCC 1
[5] (2014) 2 SCC 1

A) The instant petition under Article 32 of the Constitution of India, seeking quashing of the FIR may not be entertained and the petitioner be relegated to remedies available under the Code[6].

B) At the present stage, the allegations made in the FIR were required to be presumed to be true and the matter be allowed to be investigated into.

C) The attempts on part of the petitioner were to spread misinformation or incorrect information and cause panic in the perception of the general public; for example, the statement that some people feared that there could be food riots post lockdown was without any basis and had clear potential of spreading panic. Such action would be covered and be punishable under Sections 52 and 54 of the DM Act[1].

D) Whether such statements were deliberate or unintended and innocent assertions, would be a matter for investigation and as such no case was made out for interference at the present stage.

E) The episode in question was uploaded on 30.03.2020 and migrant workers in many metropolitan cities and towns had started walking towards

[6] The Code of Criminal Procedure, 1973

their hometowns seriously jeopardising their own health and safety and that of the society in general.

12. In response to the second prayer, it was submitted by the Solicitor General: -

The direction as prayed for, if granted would result in overstepping the field and area reserved for the Legislature. Any preliminary inquiry as suggested by the petitioner, would be clearly opposed to law and not sanctioned or permitted by law.

13. Mr. S.V. Raju, learned Additional Solicitor General who appeared for Union of India, submitted: -

A) The matter would additionally come under Section 188 read with Section 511 of the IPC[3] as the statements made by the petitioner were in the nature of incitement to disobey the orders passed by the concerned authorities pursuant to lockdown including the order dated 31.03.2020[7] passed by this Court.

B) The bar under Section 195 of the Code with respect to cases falling under Section 188 of the IPC[3] would be relatable to the stage of cognizance

[7] Writ Petition (C) No.468 of 2020 (*Alakh Alok Srivastava v. Union of India*)

by Court and not to anterior stages and as such the matter be allowed to be investigated into.

C) Norms of Journalistic Conduct framed by the Press Council of India (2010 Edition) obliged the petitioner to check the facts and data thoroughly from authentic sources and only thereafter he could make any publication relating to the pandemic in a manner which was bereft of sensationalization or exaggeration. The conduct of the petitioner was completely wanting in this respect.

Paragraph 39 of said Norms, on which reliance was placed, reads:-

> "**39. <u>Reporting on Natural Calamities</u>**
> (i) Facts and data relating to spread of epidemics or natural calamities shall be checked up thoroughly from authentic sources and then published with due restraint in a manner bereft of sensationalism, exaggeration, surmises or unverified facts.
>
> (ii) Natural or manmade hazards become disasters through acts of commission and omission of the society. Therefore, the disastrous impact can be minimized by preventive action taken by all the stakeholders including the media.
>
> (iii) Media should give wide publicity to the do's and don'ts and the potential benefits of disaster mitigation so that the society follows them before, during and after the occurrence of the disasters. People should be detailed on standard guidelines. The issues of children and women which are the most vulnerable groups during and after disaster should be handled carefully by the media.
>
> (iv) It is necessary to have complete cooperation between the media and all governmental and non-governmental

> agencies. The extent of the coordination and cooperation between them determines the nature, the degree and the scale of the preparedness to prevent or meet the disasters."

14. Mr. Mahesh Jethamalani and Mr. Vinay Navre, learned Senior Advocates for respondent No.3 reiterated the submissions on behalf of the State and the Union and submitted that the severity and magnitude of the pandemic called for strict adherence to the journalistic standards and observance of restraint; that it was the fake and inaccurate reporting that triggered the migration of workers; that the petitioner definitely intended to disrupt the public order and that his intention was apparent from statements that there could be food shortage resulting in food riots. In the written submissions filed by respondent No.3, the Order dated 24.03.2020 and Guidelines dated 28.03.2020 were highlighted and relied upon to submit that by spreading false information regarding shortage of food, medical and other essential services, the petitioner had contravened the Order dated 24.03.2020 and Guidelines dated 28.03.2020 and thereby committed offences punishable under Sections 188, 153, 124A and 503(b) of the IPC[3].

15. In rejoinder, Mr. Singh repelled the arguments advanced by the respondents and the essence of his contentions as found in the written submissions was: -

A) The video of the telecast if watched in its entirety would show that the intent of the petitioner was to reaffirm the highest standard of journalism and independence of the media. The petitioner did his duty to bring forth the dispassionate and critical appraisal of the Government. His actions were fully covered by Explanations 2 and 3 of Section 124A, IPC[3] and exception to Section 505 IPC[3] and were within his Right of Free Speech and Expression guaranteed under Article 19 (1)(a) of the Constitution of India.

B) The complainant along with the State brought down their case from Section 124-A and Section 505 to Section 188 IPC[3] in their attempt to show that some cognizable offence was committed by the petitioner. The allegation that the petitioner disobeyed the order dated 31.03.2020[7] passed by this Court was rather absurd as the telecast was issued prior to the directions of this Court.

C) The offences under the DM Act[1] and Section 188 of the IPC[3] were not made out and, in any case, in the absence of a complaint in terms of Section 60 of the DM Act[1] and Section 195 of the Code, the submissions made by the respondents called for rejection.

D) Further, the order dated 31.03.2020[7] gave liberty to the media to have a free discussion about the pandemic; and that there was no unverified

news nor was there any disobedience by the Petitioner. The information in the telecast was based on the information available in the public domain. The interview of former Chief Statistician, Mr. Pronab Sen reported on 28.3.2020 and the notification dated 19.3.2020 and 24.3.2020 prohibiting export of surgical masks, ventilators and sanitizers were also placed on record.

In support of the contention that the petitioner had been a journalist of some standing, following awards / recognitions received by the petitioner were highlighted in the written submissions: -

> "i. Padma Shri for Excellence in Journalism by the Hon'ble President of India.
>
> ii. The B.D. Goenka award for excellence in journalism, instituted by Late Shri Ram Nath Goenka and decided by an eminent jury comprising Justice Sujata Manohar, Justice Bakhtawar Lentin and Jurist Nani Palkhiwala.
>
> iii. Haldighati Award for excellence in journalism by the Maharana Mewar Foundation.
>
> iv. The RedInk Life Time Achievement Award by the Mumbai Press Club.
>
> v. Conferred with D.Litt. (Honoris Causa) by ITM University, Gwalior."

Finally, in support of the second prayer, the written submissions stated: -

> "There would be similarity between the case of *Jacob Mathews* (2005) 6 SCC 1 and the present case as a large number of TV journalists had been prosecuted in the recent past. More than 56 FIR were registered against TV journalists. Explanations 2 and 3 under Section 124-A IPC

would clearly exempt media persons from the commission of the said offence and also the Exception under Section 505 IPC would exempt media persons acting in good faith, from the offence under said Section."

16. In the written submissions filed on behalf of respondent No.3, the relevant text of communications dated 24.03.2020 and 28.03.2020 was set out as under: -

> "f. On 24.03.2020, the Ministry of Home Affairs issued a public order proclaiming that in view of the orders that had been issued under the Disaster Management Act, 2005 (lockdown measures) which read as under:
>
> > "1. In the wake of the orders that have been issued under the Disaster Management Act, 2005, there are possibilities of rumour mongering, including those relating to shortage of food and other essential services and commodities.
> >
> > 2. In this context, it is imperative that all State Governments and Union Territory Administrations take necessary steps to suitably publicise through all available means that food, medical and civil supplies, and other essential services will be maintained and there are adequate supplies available in the country.
> >
> > 3. It is also requested that provisions of the Guidelines issued in this regard, on the measures to be taken for containment of COVID-19 epidemic in the country, as annexure to MHA Order No.40-3/2020-D dated 24.03.2020 may be suitably disseminated amongst the public. All measures may be taken to allay apprehensions and maintain peace and tranquillity."
>
> g. On 26.03.2020 the PM had announced Pradhan Mantri Garib Kalyan Anna Yojna under which 5 Kg of Rice or wheat (according to regional dietary preferences) per person and 1 kg of dal would be provided to each family holding a ration card. This successful scheme covers 80 crore people and has now been extended till November 2020. It is recognised *inter alia* by the WHO as the largest food security programme in the world.
> h. Two days before impugned telecast by the Petitioner, the MHA issued Consolidated Guidelines on 28.03.2020. As per guidelines:

> "2. Offices of the State/Union Territory Governments, their Autonomous Bodies, Corporations, etc. shall remain closed.
> Exceptions:
> h. Agencies engaged in procurement of agriculture products, including MSP operations.
> i. 'Mandis' operated by the Agriculture Produce Market Committee or as notified by the State Government.
>
> 4. Commercial and private establishments shall be closed down.
> Exceptions:
> a. Shops, including ration shops (under PDS), dealing with food, groceries, fruits and vegetables, dairy and milk booths, meat and fish, animal fodder, fertilizers, seeds and pesticides. However, district authorities may encourage and facilitate home delivery to minimize the movement of individuals outside their homes.
>
> 6. All transport services – air, rail, roadways – will remain suspended.
>
> Exceptions:
> a. Transportation for essential good only.
> …. ….. …..
> e. Cross land border movement of essential goods including petroleum products and LPG, food products, medical supplies.
> f. Intra and inter-state movement of harvesting and sowing related machines like combined harvester and other agriculture/horticulture implements."

i. The orders of 24.03.2020 as also the consolidated guidelines of 28.03.2020 are both orders duly promulgated by public servants and disobedience to them by any person renders that person liable to punishment u/s 188 IPC. In *Alakh Alok Srivastava vs. Union of India*, this Hon'ble Court, in its order dated 31.03.2020 (Coram: Hon'ble Chief Justice and Hon'ble Justice Nageswara Rao) held as under:

> "Disobedience to an order promulgated by a public servant would result in punishment under Section 188 of the Indian Penal Code. An advisory which is in the nature of an order made by the public authority attracts Section 188 of the Indian Penal Code."

> In spreading manifestly false information and rumour mongering regarding shortages in the country of food, medical and other essential services, the Petitioner has contravened the said orders of 24.03.2020 and 28.03.2020."

It was further stated:-

> "Neither in the petition nor in his written submission has the petitioner denied that he had knowledge of the advisory of 24.3.2020 and the consolidated guidelines issued by the MHA on 28.3.2020 nor of the Pradhan Mantri Garib Kalyan Anna Yojna announced on 26.3.2020. The petitioner telecast on 30.3.2020, as well as at least three subsequent telecasts from April to June, 2020 dealt with the prevailing COVID situation and the Governments' response to the developing pandemic. While dealing with so sensitive subject on more than one occasion, it was incumbent upon the petitioner as a responsible journalist and by virtue of the Press Council Norms to keep himself abreast with Government orders, guidelines pertaining to the pandemic. Indeed, his telecast and written submission indicate that he had express knowledge of some Government notifications, issued prior to the telecast of 30.3.2020."

17. At the outset, we must consider whether the instant challenge raised through a petition under Article 32 of the Constitution and the prayers made in the petition can be entertained and considered specially when the investigation into the alleged crime has not yet resulted in a report under Section 173 of the Code.

18. It is the contention of the respondents that the petitioner be relegated to the remedies under the Code rather than entertain the instant petition under Article 32 of the Constitution. Since the first prayer in the petition seeks quashing of the FIR, reliance is placed on the decision of this

Court in ***Arnab Ranjan Goswami vs. Union of India and Others***[8] in which the relief was granted against multiple FIRs arising from the same television show and pending at places other than Mumbai but this Court refused to exercise jurisdiction under Article 32 of the Constitution for the purpose of quashing the basic FIR registered at Mumbai. The relevant discussion in that behalf was: -

> "39. A litany of our decisions — to refer to them individually would be a parade of the familiar — has firmly established that any reasonable restriction on fundamental rights must comport with the proportionality standard, of which one component is that the measure adopted must be the least restrictive measure to effectively achieve the legitimate State aim. Subjecting an individual to numerous proceedings arising in different jurisdictions on the basis of the same cause of action cannot be accepted as the least restrictive and effective method of achieving the legitimate State aim in prosecuting crime. The manner in which the petitioner has been subjected to numerous FIRs in several States, besides the Union Territories of Jammu and Kashmir on the basis of identical allegations arising out of the same television show would leave no manner of doubt that the intervention of this Court is necessary to protect the rights of the petitioner as a citizen and as a journalist to fair treatment (guaranteed by Article 14) and the liberty to conduct an independent portrayal of views. In such a situation to require the petitioner to approach the respective High Courts having jurisdiction for quashing would result into a multiplicity of proceedings and unnecessary harassment to the petitioner, who is a journalist.
>
> 40. The issue concerning the registration of numerous FIRs and complaints covering different States is however, as we will explain, distinct from the investigation which arises from FIR No. 164 of 2020 at N.M. Joshi Marg Police Station in Mumbai. The petitioner, in the exercise of his right under Article 19(1)(*a*), is not immune from an investigation into

[8] (2020) 14 SCC 12

the FIR which has been transferred from Police Station Sadar, District Nagpur City to N.M. Joshi Marg Police Station in Mumbai. This balance has to be drawn between the exercise of a fundamental right under Article 19(1)(*a*) and the investigation for an offence under the CrPC. All other FIRs in respect of the same incident constitute a clear abuse of process and must be quashed.

….. ….. …..

57. We hold that it would be inappropriate for the Court to exercise its jurisdiction under Article 32 of the Constitution for the purpose of quashing FIR No. 164 of 2020 under investigation at N.M. Joshi Marg Police Station in Mumbai. In adopting this view, we are guided by the fact that the checks and balances to ensure the protection of the petitioner's liberty are governed by the CrPC. Despite the liberty being granted to the petitioner on 24-4-2020[9], it is an admitted position that the petitioner did not pursue available remedies in the law, but sought instead to invoke the jurisdiction of this Court. Whether the allegations contained in the FIR do or do not make out any offence as alleged will not be decided in pursuance of the jurisdiction of this Court under Article 32, to quash the FIR. The petitioner must be relegated to the pursuit of the remedies available under the CrPC, which we hereby do. The petitioner has an equally efficacious remedy available before the High Court. We should not be construed as holding that a petition under Article 32 is not maintainable. But when the High Court has the power under Section 482, there is no reason to by-pass the procedure under the CrPC, we see no exceptional grounds or reasons to entertain this petition under Article 32. There is a clear distinction between the maintainability of a petition and whether it should be entertained. In a situation like this, and for the reasons stated hereinabove, this Court would not like to entertain the petition under Article 32 for the relief of quashing the FIR being investigated at N.M. Joshi Police Station in Mumbai which can be considered by the High Court. Therefore, we are of the opinion that the petitioner must be relegated to avail of the remedies which are available under the CrPC before the competent court including the High Court." (Emphasis supplied)

[9] Arnab Ranjan Goswami v. Union of India, (2020) 14 SCC 51

The further contention is that there are no exceptional grounds or reasons for entertaining the petition under Article 32 of the Constitution nor is there any reason to bypass the procedure under the Code.

19. Reliance is also placed on the decision of this Court in ***Amish Devgan vs. Union of India and Others***[10] which in turn referred to the decisions of this Court in ***State of H.P. vs. Pirthi Chand and Another***[11] and ***State of UP vs. OP Sharma***[12] as well as the decision in ***Arnab Ranjan Goswami***[8]. In ***Amish Devgan***[10]**,** this Court did not refuse to entertain the petition at the threshold but proceeded to consider the issues on merits and finally declined the prayer made by the petitioner for quashing of the FIRs. The following observations are noteworthy: -

> "118. We respectfully agree with the aforesaid ratio. Ordinarily we would have relegated the petitioner and asked him to approach the concerned High Court for appropriate relief, albeit in the present case detailed arguments have been addressed by both sides on maintainability and merits of the FIRs in question and, therefore, been dealt with by us and rejected at this stage. We do not, in view of this peculiar circumstance, deem it appropriate to permit the petitioner to open another round of litigation; therefore, we have proceeded to answer the issues under consideration."
>
> (Emphasis supplied)

[10] (2021) 1 SCC 1
[11] (1996) 2 SCC 37
[12] (1996) 7 SCC 705

At the same time, there is a line of cases in which even while exercising jurisdiction under Article 32 of the Constitution of India, this Court was pleased to quash the concerned FIRs; some such cases being: -

(i) ***Vijay Shekhar and Another vs. Union of India and Others***[13]

(ii) ***Rini Johar and Another vs. State of Madhya Pradesh and Others***[14]

(iii) ***Monica Kumar and Another vs. State of Uttar Pradesh and Others***[15]

(iv) ***Priya Prakash Varrier and Others vs. State of Telangana and Another***[16]

(v) ***Laxmibai Chandaragi B. and Another vs. State of Karnataka and Others***[17]

20. In ***Priya Prakash Varrier***[16], the nature of relief claimed was set out in paragraph 1 of the decision whereafter this Court relied upon the dictum of the Constitution Bench in ***Ramji Lal Modi vs. State of U.P.***[18] that for an offence to come within the parameters of Section 295-A of the IPC[3], the

[13] (2004) 4 SCC 666
[14] (2016) 11 SCC 703
[15] (2017) 16 SCC 169
[16] (2019) 12 SCC 432
[17] (2021) 3 SCC 360
[18] AIR (1957) SC 620

crime ought to have been committed with deliberate and malicious intention of outraging the religious feelings of a class. Finding such element to be completely absent, the relief prayed for was granted by this Court. The relevant observations of this Court were:-

> "1. In the instant writ petition preferred under Article 32 of the Constitution of India, the petitioners, namely, the actor, producer and director of the movie, have prayed for quashing of FIR No. 34 of 2018, dated 14-2-2018, registered at Falaknama Police Station, Hyderabad, Telangana. That apart, a prayer has also been made that no FIR should be entertained or no complaint under Section 200 of the Code of Criminal Procedure, 1973 should be dealt with because of the picturisation of the song "Manikya Malaraya Poovi" by Petitioner 1 in the film, namely, "Oru Adaar Love".
>
> 7. It is worthy to note here that the constitutional validity of the said provision was assailed before this Court and a Constitution Bench in *Ramji Lal Modi* v. *State of U.P.*[17], spoke thus: (AIR pp. 622-23, paras 8-9)
>
> > "*8*. It is pointed out that Section 295-A has been included in Chapter XV, Penal Code which deals with offence relating to religion and not in Chapter VIII which deals with offences against the public tranquillity and from this circumstance it is faintly sought to be urged, therefore, that offences relating to religion have no bearing on the maintenance of public order or tranquillity and consequently a law creating an offence relating to religion and imposing restrictions on the right to freedom of speech and expression cannot claim the protection of clause (2) of Article 19. A reference to Articles 25 and 26 of the Constitution, which guarantee the right to freedom of religion, will show that the argument is utterly untenable. The right to freedom of religion assured by those articles is expressly made subject to public order, morality and health. Therefore, it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion

cannot under any circumstances be said to have been enacted in the interests of public order. Those two articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order.

9. The learned counsel then shifted his ground and formulated his objection in a slightly different way. Insults to the religion or the religious beliefs of a class of citizens of India, may, says the learned counsel, lead to public disorders in some cases, but in many cases they may not do so and, therefore, a law which imposes restrictions on the citizens' freedom of speech and expression by simply making insult to religion an offence will cover both varieties of insults i.e. those which may lead to public disorders as well as those which may not. The law insofar as it covers the first variety may be said to have been enacted in the interests of public order within the meaning of clause (2) of Article 19, but insofar as it covers the remaining variety will not fall within that clause. The argument then concludes that so long as the possibility of the law being applied for purposes not sanctioned by the Constitution cannot be ruled out, the entire law should be held to be unconstitutional and void. We are unable, in view of the language used in the impugned section, to accede to this argument. In the first place clause (2) of Article 19 protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression "in the interests of public order", which is much wider than "for maintenance of" public order. If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law imposing reasonable restriction "in the interests of public order" although in some cases those activities may not actually lead to a breach of public order. In the next place Section 295-A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious

> intention to outrage the religious feelings of that class do not come within the section. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the section, which penalises such activities, is well within the protection of clause (2) of Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 19(1)(*a*). Having regard to the ingredients of the offence created by the impugned section, there cannot, in our opinion, be any possibility of this law being applied for purposes not sanctioned by the Constitution. In other words, the language employed in the section is not wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Article 19(1)(*a*) and consequently the question of severability does not arise and the decisions relied upon by learned counsel for the petitioner have no application to this case."

12. In *Mahendra Singh Dhoni* v. *Yerraguntla Shyamsundar*[19], the justification for the registration of an FIR under Section 295-A had come up for consideration before this Court. Appreciating the act done by the petitioner therein, the Court quashed the FIR for an offence under Section 295-A IPC.

13. If the ratio of the Constitution Bench is appropriately appreciated, the said provision was saved with certain riders, inasmuch as the larger Bench had observed that the language employed in the section is not wide enough to cover restrictions, both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Article 19(1)(*a*) of the Constitution. The emphasis was laid on the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.

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[19] (2017) 7 SCC 760

….. ….. …..

> 15. In view of the aforesaid, we allow the writ petition and quash FIR No. 34 of 2018. We also direct that no FIR under Section 154 or any complaint under Section 200 of the Code of Criminal Procedure should be entertained against the petitioners because of the picturisation of the song. However, there shall be no order as to costs."

Notably, this decision rendered by a three Judge Bench of this Court was in the context of right claimed under Article 19(1)(a) of the Constitution, where the offence alleged was one under Section 295-A of the IPC[3]. Apart from quashing the FIR, this Court also directed that no FIR or complaint should be entertained against the petitioners because of the picturisation of the concerned song.

21. In the celebrated case of ***Romesh Thappar*** v. ***The State of Madras***[20]***,*** a Constitution Bench of this Court dealt with the preliminary objection that instead of entertaining a petition under Article 32 of the Constitution, the petitioner be asked to approach the High Court under Article 226 of the Constitution, in following words:-

> "The Advocate-General of Madras appearing on behalf of the respondents raised a preliminary objection, not indeed to the jurisdiction of this Court to entertain the application under article 32, but to the petitioner resorting to this Court directly for such relief in the first instance. He contended that, as a matter of orderly procedure, the petitioner should first resort to the High Court at Madras which under

[20] 1950 SCR 594

article 226 of the Constitution has concurrent jurisdiction to deal with the matter. He cited criminal revision petitions under section 435 of the Criminal Procedure Code, applications for bail and applications for transfer under section 24 of the civil Procedure Code as instances where, concurrent jurisdiction having been given in certain matters to the High Court and the Court of a lower grade, a rule of practice has been established that a party should proceed first to the latter Court for relief before resorting to the High Court. He referred to Emperor v. Bisheswar Prasad Sinha[21], where such a rule of practice was enforced in a criminal revision case, and called our attention also to certain American decisions Urquhart v. Brown[22] and Hooney v. Kolohan[23], as showing that the Supreme Court of the United States ordinarily required that whatever judicial remedies remained open to the applicant in Federal and State Courts should be exhausted before the remedy in the Supreme Court - be it habeas corpus or certiorari - would be allowed. We are of opinion that neither the instances mentioned by the learned Advocate-General nor the American decisions referred to by him are really analogous to the remedy afforded by article 32 of the Indian Constitution. That article does not merely confer power on this Court, as article 226 does on the High Court, to issue certain writs for the enforcement of the rights conferred by Part III or for any other purpose, as part of its general jurisdiction. In that case it would have been more appropriately placed among articles 131 to 139 which define that jurisdiction. Article 32 provides a "guaranteed" remedy for the enforcement of those rights, and this remedial right is itself made a fundamental right by being included in Part III. This Court is thus constituted the protector and guarantor of fundamental rights, and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringements of such rights. No similar provision is to be found in the Constitution of the United States and we do not consider that the American decisions are in point."

[21] I.L.R. 56 All. 158
[22] 205 U.S. 179
[23] 294 U.S. 10

22. The aforestated dictum was followed by another Constitution Bench of this Court in ***Daryao and others*** v. ***The State of U.P. and others***[24] as under:

> " There can be no doubt that the fundamental right guaranteed by Art. 32(1) is a very important safeguard for the protection of the fundamental rights of the citizens, and as a result of the said guarantee this Court has been entrusted with the solemn task of upholding the fundamental rights of the citizens of this country. The fundamental rights are intended not only to protect individual's rights but they are based on high public policy. Liberty of the individual and the protection of his fundamental rights are the very essence of the democratic way of life adopted by the constitution, and it is the privilege and the duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by the Constitution itself. It is because of this aspect of the matter that in Romesh Thappar v. The State of Madras[20], in the very first year after the Constitution came into force, this Court rejected a preliminary objection raised against the competence of a petition filed under Art. 32 on the ground that as a matter of orderly procedure the petitioner should first have resorted to the High Court under Art. 226, and observed that "this Court in thus constituted the protector and guarantor of the fundamental rights, and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringements of such rights"."

23. In ***Jagisha Arora vs. State of Uttar Pradesh and Another***[25], this Court entertained a petition under Article 32 of the Constitution against an order of remand passed by the jurisdictional magistrate despite the

[24] (1962) 1 SCR 574
[25] (2019) 6 SCC 619

objection that the order must be challenged in accordance with the provisions of the Code. The discussion was:-

> "2. The fundamental rights guaranteed under the Constitution of India and in particular Articles 19 and 21 of the Constitution of India are non-negotiable.
>
> 3. The learned Additional Solicitor General appearing on behalf of the State has opposed this allegation on various technical grounds including the ground that there is an order of remand passed by the jurisdictional Magistrate. It is also contended that the High Court should have first been approached.
>
> 4. Citing the judgment of this Court in ***State of Maharashtra* v. *Tasneem Rizwan Siddiquee***[26], the learned Additional Solicitor General argued that the question of whether a writ of habeas corpus could be maintained in respect of a person who was in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, had already been settled by this Court. This application, is, therefore not maintainable. It was argued that the order of remand ought to be challenged in accordance with the provisions of the Criminal Procedure Code. It was also argued that this Court does not ordinarily entertain writ petitions unless the High Court has first been approached.
>
> 5. As a matter of self-imposed discipline and considering the pressure of mounting cases on this Court, it has become the practice of this Court to ordinarily direct that the High Court first be approached even in cases of violation of fundamental rights. However, Article 32 which is itself a fundamental right cannot be rendered nugatory in a glaring case of deprivation of liberty as in the instant case, where the jurisdictional Magistrate has passed an order of remand till 22-6-2019 which means that the petitioner's husband Prashant Kanojia would be in custody for about 13/14 days for putting up posts/tweets on the social media.

[26] (2018) 9 SCC 745 : (2019) 1 SCC (Cri) 386

> 6. We are not inclined to sit back on technical grounds. In exercise of power under Article 142 of the Constitution of India this Court can mould the reliefs to do complete justice.
>
> 7. We direct that the petitioner's husband be immediately released on bail on conditions to the satisfaction of the jurisdictional Chief Judicial Magistrate. It is made clear that this order is not to be construed as an approval of the posts/tweets in the social media. This order is passed in view of the excessiveness of the action taken."

24. Thus, the practice of directing that the High Court be approached first even in cases of violation of fundamental rights, is more of a self-imposed discipline by this Court; but in glaring cases of deprivation of liberty, this Court has entertained petitions under Article 32 of the Constitution. We may, at this stage, also notice the following observations made in ***Union of India vs. Paul Manickam and Another***[27]:-

> "22. Another aspect which has been highlighted is that many unscrupulous petitioners are approaching this Court under Article 32 of the Constitution challenging the order of detention directly without first approaching the High Courts concerned. It is appropriate that the High Court concerned under whose jurisdiction the order of detention has been passed by the State Government or Union Territory should be approached first. In order to invoke the jurisdiction under Article 32 of the Constitution to approach this Court directly, it has to be shown by the petitioner as to why the High Court has not been approached, could not be approached or it is futile to approach the High Court. Unless satisfactory reasons are indicated in this regard, filing of petition in such matters directly under Article 32 of the Constitution is to be discouraged."

[27] (2003) 8 SCC 342

25. We have therefore considered the instant case in the light of the principles emanating from all the aforementioned decisions.

Apart from the fact that the right claimed by the petitioner is one under Article 19 (1) (a) of the Constitution which was in the forefront in ***Romesh Thappar***[20], ***Priya Prakash Varrier***[16], ***Jagisha Arora***[25] and ***Amish Devgan***[10] in our view, the second prayer made by the petitioner can effectively be considered only in a writ petition. Going by the nature of the second prayer, relegating the petitioner to file a petition under Article 226 of the Constitution, may not be appropriate. Rather, the issue must ideally be settled by this Court. Consequently, we do not accept the preliminary objection raised by the respondents and we proceed to deal with the merits and consider the matter with respect to both the prayers.

26. After stating that in his Talk Show uploaded on 30.03.2020, the petitioner had asserted that the Prime Minister used deaths and terror attacks to garner votes and that the Prime Minister garnered votes through acts of terrorism, the F.I.R. stated, “This directly amounts to inciting violence amongst the citizens and will definitely disturb public tranquillity. This is an act of instigating violence against the Government and the Prime Minister.” It was also stated, “the petitioner creates panic amongst the

public and disturbs public peace by trying to spread false information, such as… the Government does not have enough testing facilities which is absolutely false."

According to the F.I.R. "…by making such false statements, Mr.Vinod Dua spread fear amongst the people. This video will only create a situation of unrest amongst the public which will result in panic and people not obeying the lockdown to come out and hoard essentials which is absolutely unnecessary.…. The rumours were spread with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public, whereby any person may be induced to commit an offence against the State or against the public tranquillity."

27. On facts, it has been established that the statements attributed to the petitioner that the Prime Minister had used deaths and terror attacks to garner votes or that the Prime Minister had garnered votes through acts of terrorism, were not made in the Talk Show. The true translation of the original episode in Hindi, has been placed on record. No such assertions find place in the true translation nor were any objections raised that the translated version was in any way incorrect. The petitioner did say that the air strikes by India on Balakot and attacks on Pathankot and Pulwama were

used as political events to garner votes but no allegations were made against the Prime Minister as was stated in the F.I.R.

It is true that some of the portions of the Talk Show do assert that there were not enough testing facilities; that there was no information as to the quantum of PPE kits/ suits, N95 masks, and masks of three ply that were available in the country; that the respiratory devices and sanitizers were being exported till 24th March (2020) instead of keeping them for use in the country; that the supply claims got disrupted due to blockage of roads; and that the migrant workers was a huge issue. It was also asserted that with supply claims being closed, some people had feared food riots, which had not happened in the country. These statements were subject matter of considerable debate by the learned Counsel and the principal question is whether these statements were merely in the nature of critical appraisal of the performance of the Government or were designed to create unrest amongst the public.

28. The scope of section 124(A) of the IPC[3] was considered by a Constitution Bench of this Court in ***Kedar Nath Singh v. State of Bihar***[2].

28.1 The conviction of Kedar Nath Singh under Sections 124A and 505(b) of the IPC[3] was affirmed by the High Court; and the view taken by the High Court was paraphrased as under:

> "In the course of his judgment, the learned Judge observed that the subject-matter of the charge against the appellant was nothing but a vilification of the Government; that it was full of incitements to revolution and that the speech taken as a whole was certainly seditious. It is not a speech criticising any particular policy of the Government or criticising any of its measures. He held that the offences both under Sections 124-A and 505(b) of the Indian Penal Code had been made out."

28.2 This Court dealt with the decisions in ***Bangobashi*** *case* (***Queen Empress v. Jogendra Chunder Bose***[28]) and ***Queen-Empress v. Balgangaddhar Tilak***[29], as under:

> "The first case in India that arose under the section is what is known as the *Bangobasi case (Queen-Empress v. Jogendra Chunder Bose*[28] which was tried by a jury before Sir Comer Petheram, C.J. While charging the jury, the learned Chief Justice explained the law to the jury in these terms:
>
> > "Disaffection means a feeling contrary to affection, in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man's sentiments or action and yet to like him. The meaning of the two words is so distinct that I feel it hardly necessary to tell you that the contention of Mr Jackson cannot be sustained. If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise, and if he does so

[28] (1892) I.L.R. 19 Cal. 35
[29] (1898) I.L.R. 22 Bom. 112.

> with the intention of creating such a disposition in his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words or any feeling of disaffection, in fact, produced by them. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government and to hold it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling."

The next case is the celebrated case of *Queen-Empress v. Balgangadhar Tilak*[29] which came before the Bombay High Court. The case was tried by a jury before Strachey, J. The learned Judge, in the course of his charge to the jury, explained the law to them in these terms:

> "The offence as defined by the first clause is exciting or attempting to excite feelings of disaffection to the Government. What are 'feelings of disaffection'? I agree with Sir Comer Petheram in the Bangobasi case that disaffection means simply the absence of affection. It means hatred, enmity, dislike, hostility, contempt and every form of ill-will to the Government. 'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind towards the Government. You will observe that the amount or intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment: if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. In the next place, it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. It is true that there is before you a charge against each prisoner that he has actually excited feelings of disaffection to the Government. If you are satisfied that he has done so, you will, of course, find him guilty. But if you should hold that that charge is not made out, and that no one is proved to have been excited to entertain feelings of disaffection to the Government by reading these articles, still that alone

> would not justify you in acquitting the prisoners. For each of them is charged not only with exciting feelings of disaffection, but also with attempting to excite such feelings. You will observe that the section places on absolutely the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them, so that, if you find that either of the prisoners has tried to excite such feelings in others, you must convict him even if there is nothing to show that he succeeded. Again, it is important that you should fully realise another point. The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles, is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within Section 124-A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite any rebellion or outbreak or forcible resistance to the authority of the Government, still if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section. I am aware that some distinguished persons have thought that there can be no offence against the section unless the accused either counsels or suggests rebellion or forcible resistance to the Government. In my opinion, that view is absolutely opposed to the express words of the section itself, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance, the test of guilt. I can only account for such a view by attributing it to a complete misreading of the explanation attached to the section, and to a misapplication of the explanation beyond its true scope."

28.3 This Court then considered the further proceedings taken up after Balgangadhar Tilak was found guilty: -

"……The Jury, by a majority of six to three, found Shri Balgangadhar Tilak guilty. Subsequently, he, on conviction, applied under clause 41 of the Letters Patent for leave to appeal to the Privy Council. The application was heard by a Full Bench consisting of Farran, C.J., Candy and Strachey, JJ. It was contended before the High Court at the leave stage, *inter alia*, that the sanction given by the Government was not sufficient in law in that it had not set out the particulars of the offending articles, and, secondly, that the Judge misdirected the jury as to the meaning of the word "disaffection" insofar as he said that it might be equivalent to "absence of affection". With regard to the second point, which is the only relevant point before us, the Full Bench expressed itself to the following effect:

> "The other ground upon which Mr Russell has asked us to certify that this is a fit case to be sent to Her Majesty in Council, is that there has been a misdirection, and he based his argument on one major and two minor grounds. The major ground was that the section cannot be said to have been contravened unless there is a direct incitement to stir up disorder or rebellion. That appears to us to be going much beyond the words of the section, and we need not say more upon that ground. The first of the minor points is that Mr Justice Strachey in summing up the case to the jury stated that disaffection meant the 'absence of affection'. But although if that phrase had stood alone it might have misled the jury, yet taken in connection with the context we think it is impossible that the jury could have been misled by it. That expression was used in connection with the law as laid down by Sir Comer Petheram in Calcutta in the *Bangaboshi* case. There the Chief Justice instead of using the words absence of affection used the words 'contrary to affection'. If the words 'contrary to affection' had been used instead of 'absence of affection' in this case there can be no doubt that the summing up would have been absolutely correct in this particular. But taken in connection with the context it is clear that by the words 'absence of affection' the learned Judge did not mean the negation of affection, but some active sentiment on the other side. Therefore on that point we consider that we cannot certify that this is a fit case for appeal.

> In this connection it must be remembered that it is not alleged that there has been a miscarriage of justice."

After making those observations, the Full Bench refused the application for leave. The case was then taken to Her Majesty in Council, by way of application for special leave to appeal to the Judicial Committee. Before Their Lordships of the Privy Council, Asquith, Q.C., assisted by counsel of great experience and eminence like Mayne, W.C. Bannerjee and others, contended that there was a misdirection as to the meaning of Section 124-A of the Penal Code in that the offence had been defined in terms too wide to the effect that "disaffection" meant simply "absence of affection", and that it comprehended every possible form of bad feeling to the Government. In this connection reference was made to the observations of Petheram, C.J. in *Queen-Empress v. Jogendra Chander Bose*[28]. It was also contended that the appellant's comments had not exceeded what in England would be considered within the functions of a public journalist, and that the misdirection complained of was of the greatest importance not merely to the affected person but to the whole of the Indian press and also to all Her Majesty's subjects; and that it injuriously affected the liberty of the press and the right to free speech in public meetings. But in spite of the strong appeal made on behalf of the petitioner for special leave, the Lord Chancellor, delivering the opinion of the Judicial Committee, while dismissing the application, observed that taking a view of the whole of the summing up they did not see any reason to dissent from it, and that keeping in view the Rules which Their Lordships observed in the matter of granting leave to appeal in criminal cases, they did not think that the case raised questions which deserve further consideration by the Privy Council, (vide *Gangadhar Tilak v. Queen-Empress.*[30]"

28.4 Thereafter, the decision of the Federal Court in ***Niharendu Dutt Majumdar v. The King Emperor***[31] was dealt with and it was noticed that

[30] (1897) L.R. 25 I.A. 1.
[31] (1942) F.C.R. 38

the statement of law made by the Federal Court was not accepted by the Privy Council. The discussion was: -

> "While dealing with a case arising under Rule 34(6)(*e*) of the Defence of India Rules under the Defence of India Act (35 of 1939), Sir Maurice Gwyer, C.J., speaking for the Federal Court, made the following observations in the case of *Niharendu Dutt Majumdar* v. *King-Emperor*[31] and has pointed out that the language of Section 124-A of the Indian Penal Code, which was in pari materia with that of the Rule in question, had been adopted from the English Law, and referred with approval to the observations of Fitzerald, J., in the case quoted above; and made the following observations which are quite apposite;
>
> > "… generally speaking, we think that the passage accurately states the law as it is to be gathered from an examination of a great number of judicial pronouncements.
> >
> > The first and most fundamental duty of every Government is the preservation of order, since order is the condition precedent to all civilisation and the advance of human happiness. This duty has no doubt been sometimes performed in such a way as to make the remedy worse than the disease; but it does not cease to be a matter of obligation because some on whom the duty rests have performed it ill. It is to this aspect of the functions of Government that in our opinion the offence of sedition stands related. It is the answer of the State to those who, for the purpose of attacking or subverting it, seek (to borrow from the passage cited above) to disturb its tranquillity, to create public disturbance and to promote disorder, or who incite others to do so. Words, deeds or writings constitute sedition, if they have this intention or this tendency; and it is easy to see why they may also constitute sedition, if they seek, as the phrase is, to bring Government into contempt. This is not made an offence in order to minister to the wounded vanity of Government, but because where Government and the law cease to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder, is thus the gist of the offence. The acts or words complained of must either incite to

> disorder or must be such as to satisfy reasonable men that that is their intention or tendency."

> This statement of the law was not approved by Their Lordships of the Judicial Committee of the Privy Council in the case of *King-Emperor* v. *Sadashiv Narayan Bhalerao*[32]. The Privy Council, after quoting the observations of the learned Chief Justice in *Niharendu case*[31] while disapproving of the decision of the Federal Court, observed that there was no statutory definition of "sedition" in England, and the meaning and content of the crime had to be gathered from many decisions."
>
> (Emphasis supplied)

28.5 The conflict in the decision of the Federal Court and that of the Privy Council was thereafter noticed by this Court as follows:

> "Thus, there is a direct conflict between the decision of the Federal Court in *Niharendu case*[31] and of the Privy Council in a number of cases from India and the Gold Coast, referred to above. It is also clear that either view can be taken and can be supported on good reasons. The Federal Court decision takes into consideration, as indicated above, the pre-existing Common Law of England in respect of sedition. It does not appear from the report of the Federal Court decision that the rulings aforesaid of the Privy Council had been brought to the notice of Their Lordships of the Federal Court."

28.6 The scope of section 124A of the IPC[3] was considered thus: -

> "The section was amended by the Indian Penal Code Amendment Act (IV of 1898). As a result of the amendment, the single explanation to the section was replaced by three separate explanations as they stand now. The section, as it now stands in its present form, is the result of the several A.O.s of 1937, 1948 and 1950, as a result of the constitutional changes, by the Government of India Act, 1935, by the Independent Act of 1947 and by the Indian

[32] 74 IA 89

Constitution of 1950. Section 124A, as it has emerged after successive amendments by way of adaptations as aforesaid, reads as follows:

> "Whoever by words, either spoken or written, or by signs or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with transportation for life or any shorter term to which fine may be added or with imprisonment which may extend to three years, to which fine may be added, or with fine.
>
> Explanation 1. The expression "disaffection" includes disloyalty and all feelings of enmity.
>
> Explanation 2. Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section.
>
> Explanation 3, Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

This offence, which is generally known as the offence of Sedition, occurs in Chapter VI of the Indian Penal Code, headed 'Of offences against the State'. This species of offence against the State was not an invention of the British Government in India, but has been known in England for centuries. Every State, whatever its form of Government, has to be armed with the power to punish those who, by their conduct, jeopardise the safety and stability of the State, or disseminate such feeling of disloyalty as have the tendency to lead to the disruption of the State or to public disorder. In England, the crime has thus been described by Stephen in his Commentaries on the Laws of England, 21st Edition, volume IV, at pages 141-142, in these words:

> "Section IX. Sedition and Inciting to Disaffection – We are now concerned with conduct

> which, on the one hand, fall short of treason, and on the other does not involve the use of force or violence. The law has here to reconcile the right of private criticism with the necessity of securing the safety and stability of the State. Sedition may be defined as conduct which has, either as its object or as its natural consequence, the unlawful display of dissatisfaction with the Government or with the existing order of society.
>
> The seditious conduct may be by words, by deed, or by writing. Five specific heads of sedition may be enumerated according to the object of the accused. This may be either.
>
> 1. to excite disaffection against the King, Government, or Constitution, or against Parliament or the administration of justice;
> 2. to promote by unlawful means, any alteration in Church or State;
> 3. to incite a disturbance of the peace ;
> 4. to raise discontent among the King's subjects ;
> 5. to excite class hatred.
>
> It must be observed that criticism on political matters is not of itself sedition. The test is the manner in which it is made. Candid and honest discussion is permitted. The law only interferes when the discussion passes the bounds of fair criticism. More especially will this be the case when the natural consequence of the prisoner's conduct is to promote public disorder."

This statement of the law is derived mainly from the address to the Jury by Fitzerald, J., in the case of Reg v. Alexander Martin Sullivan[33]. In the course of his address to the Jury, the learned Judge observed as follows:

> "Sedition is a crime against society, nearly allied to that of treason and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the empire. The objects of sedition generally are to induce discontent and insurrection, and stir up

[33] (1867-71) 11 Cox's Criminal Law Cases, 44 at p. 45

> opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitution of the realm, and generally all endeavours to promote public disorder."

That the law has not changed during the course of the centuries is also apparent from the following statement of the law by Coleridge, J., in the course of his summing up to the Jury in the case of Rex v. Aldred[34]:

> "Nothing is clearer than the law on this head — namely, that whoever by language, either written or spoken, incites or encourages others to use physical force or violence in some public matter connected with the State, is guilty of publishing a seditious libel. The word 'sedition' in its ordinary natural signification denotes a tumult, an insurrection, a popular commotion, or an uproar; it implies violence or lawlessness in some form…."

In that case, the learned Judge was charging the Jury in respect of the indictment which contained the charge of seditious libel by a publication by the defendant."

28.6.1 Finally, while considering the applicability of Section 124A of the IPC[3], especially in the context of the Right guaranteed under Article 19(1)(a) of the Constitution, this Court concluded: -

> "It has not been questioned before us that the fundamental right guaranteed by Article 19(1)(*a*) of the freedom of speech and expression is not an absolute right. It is common ground that the right is subject to such reasonable

[34] (1911-13) 22 Cox's Criminal Law Cases, 1 at p. 3

restrictions as would come within the purview of clause (2), which comprises (*a*) security of the State, (*b*) friendly relations with foreign States, (*c*) public order, (*d*) decency or morality, etc. etc. With reference to the constitutionality of Section 124-A or Section 505 of the Indian Penal Code, as to how far they are consistent with the requirements of clause (2) of Article 19 with particular reference to security of the State and public order, the section, it must be noted, penalises any spoken or written words or signs or visible representations, etc. which have the effect of bringing, or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law. Now, the expression "the Government established by law" has to be distinguished from the persons for the time being engaged in carrying on the administration. "Government established by law" is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence, the continued existence of the Government established by law is an essential condition of the stability of the State. That is why "sedition", as the offence in Section 124-A has been characterised, comes, under Chapter VI relating to offences against the State. Hence, any acts within the meaning of Section 124-A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc. which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term "revolution", have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or

acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.

It has not been contended before us that if a speech or a writing excites people to violence or have the tendency to create public disorder, it would not come within the definition of "sedition". What has been contended is that a person who makes a very strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of Government or acts of public officials, might also come within the ambit of the penal section. But in our opinion, such words written or spoken would be outside the scope of the section. In this connection, it is pertinent to observe that the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with a view to punishing offences against the State, is undertaken. Such a legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the sine qua non of a democratic form of Government that our Constitution has established. This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. The Court has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambit of a citizen's fundamental right guaranteed under Article 19(1)(*a*) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order. We have, therefore, to determine how far the Sections 124-A and 505 of the Indian Penal Code could be said to be within the

justifiable limits of legislation. If it is held, in consonance with the views expressed by the Federal Court in the case of *Niharendu Dutt Majumdar* v. *King-Emperor*[31] that the gist of the offence of "sedition" is incitement to violence or the tendency or the intention to create public disorder by words spoken or written, which have the tendency or the effect of bringing the Government established by law into hatred or contempt or creating disaffection in the sense of disloyalty to the State, in other words bringing the law into line with the law of sedition in England, as was the intention of the legislators when they introduced Section 124-A into the Indian Penal Code in 1870 as aforesaid, the law will be within the permissible limits laid down in clause (2) of Article 19 of the Constitution. If on the other hand we give a literal meaning to the words of the section, divorced from all the antecedent background in which the law of sedition has grown, as laid down in the several decisions of the Judicial Committee of the Privy Council, it will be true to say that the section is not only within but also very much beyond the limits laid down in clause (2) aforesaid.

In view of the conflicting decisions of the Federal Court and of the Privy Council, referred to above, we have to determine whether and how far the provisions of Sections 124-A and 505 of the Indian Penal Code have to be struck down as unconstitutional. If we accept the interpretation of the Federal Court as to the gist of criminality in an alleged crime of sedition, namely, incitement to disorder or tendency or likelihood of public disorder or reasonable apprehension thereof, the section may lie within the ambit of permissible legislative restrictions on the fundamental right of freedom of speech and expression. There can be no doubt that apart from the provisions of clause (2) of Article 19, Sections 124-A and 505 are clearly violative of Article 19(1)(*a*) of the Constitution. But then we have to see how far the saving clause, namely, clause (2) of Article 19 protects the sections aforesaid. Now, as already pointed out, in terms of the amended clause (2), quoted above, the expression "in the interest of … public order" are words of great amplitude and are much more comprehensive then the expression "for the maintenance of", as observed by this Court in the case of *Virendra* v. *State of Punjab*[35]. Any law which is enacted

[35] (1958) SCR 308 at p. 317

in the interest of public order may be saved from the vice of constitutional invalidity. If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make them unconstitutional in view of Article 19(1)(*a*) read with clause (2). It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress [vide (*1*) *Bengal Immunity Company Limited* v. *State of Bihar*[36] and (*2*) *R.M.D. Chamarbaugwala* v. *Union of India*[37].] Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.

[36] (1955) 2 SCR 603
[37] (1957) SCR 930

We may also consider the legal position, as it should emerge, assuming that the main Section 124-A is capable of being construed in the literal sense in which the Judicial Committee of the Privy Council has construed it in the cases referred to above. On that assumption, is it not open to this Court to construe the section in such a way as to avoid the alleged unconstitutionality by limiting the application of the section in the way in which the Federal Court intended to apply it? In our opinion, there are decisions of this Court which amply justify our taking that view of the legal position. This Court, in the case of *R.M.D. Chamarbaugwalla* v. *Union of India*[37] has examined in detail the several decisions of this Court, as also of the courts in America and Australia. After examining those decisions, this Court came to the conclusion that if the impugned provisions of a law come within the constitutional powers of the legislature by adopting one view of the words of the impugned section or Act, the Court will take that view of the matter and limit its application accordingly, in preference to the view which would make it unconstitutional on another view of the interpretation of the words in question. In that case, the Court had to choose between a definition of the expression "Prize Competitions" as limited to those competitions which were of a gambling character and those which were not. The Court chose the former interpretation which made the rest of the provisions of the Act, Prize Competitions Act (42 of 1955), with particular reference to Sections 4 and 5 of the Act and Rules 11 and 12 framed thereunder, valid. The Court held that the penalty attached only to those competitions which involved the element of gambling and those competitions in which success depended to a substantial degree on skill were held to be out of the purview of the Act. The *ratio decidendi* in that case, in our opinion, applied to the case in hand insofar as we propose to limit its operation only to such activities as come within the ambit of the observations of the Federal Court, that is to say, activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace."

(Emphasis supplied)

28.7 It may be noted here that the appeal of ***Kedar Nath Singh***[2] was dismissed by this Court, affirming the view taken by the Courts below that the speech, taken as a whole, was seditious.

28.8 This Court, thus, did not follow the decisions of the Privy Council in ***Balgangadhar Tilak vs. Queen Empress***[30] and in ***King Emperor vs. Sadashiv Narayan Bhalerao***[32] but held that the operation of Section 124A of the IPC[3] must be limited only to such activities as come within the ambit of the observations of the Federal Court.

29. It may, therefore, be necessary to deal with the aforesaid decisions of the Privy Council and that of the Federal Court in some detail.

30. Accused, Sadashiv Narayan Bhalerao had distributed certain pamphlets on 26.01.1943 in respect of which he was tried for having committed offence punishable under Rule 38(5) read with Rule 34 of the Defence of India Rules. The relevant statutory provisions as quoted in the decision of the Privy Council were :-

> "The Defence of India Rules, which were made by the Central Government under S. 2 of the Defence of India Act, 1939 (XXXV of 1939) - so far as material - provided as follows :
>
> > "34.(6) prejudicial act' means any act which is intended or is likely-
> > ….. ….. …..

> (e) to bring into hatred or contempt, or to excite disaffection towards, His Majesty or the Crown Representative or the Government established by law in British India or in any other part of His Majesty's dominions;
>
> ….. ….. …..
>
> (g) to cause fear or alarm to the public or to any section of the public;
>
> ….. ….. …..
>
> 34.(7) 'prejudicial report' means any report, statement or visible representation, whether true or false, which, or the publishing of which, is, or is an incitement to the commission of, a prejudicial act as defined in this rule;
>
> ….. ….. …..
>
> 38.(i) No person shall, without lawful authority or excuse,
>
> ….. ….. …..
>
> (c) make, print, publish or distribute any document containing, or spread by any other means whatsoever, any prejudicial report;
>
> ….. ….. …..
>
> (5) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both."

30.1 The trial Magistrate had acquitted the accused. The appeal by the Crown having been dismissed, the matter was taken up before the Privy Council. Some of the relevant passages from the decision of the Privy Council were: -

> "Their Lordships are unable to accept the test laid down by the learned Chief Justice, as applicable in India. Their Lordships agree, for the purposes of the present appeal, that there is no material distinction between r. 34, sub-r.6, sub-para. (e), and S. 124A, Penal Code, though it might be suggested that the words "an act which is intended or likely to bring" in the Rule are wider than the words "brings or attempts to bring" in the Code. They further agree with the learned Chief Justice that the omission in the rule of

the three explanations in the Code should not lead to any difference in construction.

The word "sedition" does not occur either in S. 124A or in the Rule; it is only found as a marginal note to S. 124A, and is not an operative part of the section, but merely provides the name by which the crime defined in the section will be known. There can be no justification for restricting the contents of the section by the marginal note. In England there is no statutory definition of sedition; its meaning and content have been laid down in many decisions, some of which are referred to by the Chief Justice, but these decisions are not relevant when you have a statutory definition of that which is termed sedition, as we have in the present case.

…. ….. …..

In Wallace-Joshnson v. The King[38] under sub-s.8 of S.326 of the Criminal Code of the Gold Coast, "seditious intention" was defined as an intention "to bring into hatred or contempt or to excite disaffection against. . . . . the Government of the Gold Coast as by law established." It was held by this Board that the words were clear and unambiguous, and that incitement to violence was not a necessary ingredient of the crime of sedition as thereby defined.

In conclusion, their Lordships will only add that the amendments of S.124A in 1898, the year after Tilak's case (3), by the inclusion of hatred or contempt and the addition of the second and third explanations, did not affect or alter the construction of the section laid down in Tilak's case (3), and, in their opinion, if the Federal Court, in Niharendu's case (5) had given their attention to Tilak's case (3), they should have recognized it as an authority on the construction of S.124A by which they were bound.

Their Lordship are accordingly of opinion that the appeal should be allowed and that the judgments and orders of the courts below should be set aside, and that it should be declared that it is not an essential ingredient of a prejudicial act as defined in sub-para. (e) of r.34, sub-r.6, of the Defence of India Rules that it should be an act which is intended or is likely to incite to public disorder."

[38] (1940) A.C. 231

31. We may also note the submission[39] made on behalf of ***Balgangadhar Tilak*** before the Privy Council which was paraphrased in the report as under: -

> "Asquith, Q.C. (Mayne, G. H. Blair, and W.C. Bonnerjee with him), for the petitioner, contended that this was a case in which an appeal should be admitted. The misdirection as to the meaning of Art.124A of the Penal Code raised a question of great and general importance within the meaning of Reg v. Bertrand. (1) The Judge's direction was objected to in that it defined the offence created by S.124A in terms too wide, to the effect that disaffection meant simply absence of affection, that it meant a feeling (not translated into overt act) of hatred, enmity, dislike, hostility, contempt, and any form of ill-will to the Government; that disloyalty was perhaps the best term, and that it comprehended every possible form of bad feeling to the Government; that a man must not make or try to make others feel enmity of any kind against the Government; that if a man expresses condemnation of the measures legislative or executive of the Government he was within his right, but that if he went further and held up the Government itself to the hatred and contempt of his readers by the imputation of motives or by denouncing its foreign origin or character, that then he was guilty under the Section. Reference was made to the definition of the word "disaffection" by Petheram C.J. in Queen Empress v. Jogendra Chunder Bose and Others[23].
>
> It was contended that Tilak's comments had not exceeded what in England would be considered within the functions of a public journalist. It was further contended that the misdirection complained of was of the greatest importance, not merely to the petitioner, but to the whole of the Indian press, and also to all the Indian subjects of the Crown. It affected injuriously the liberty of the press, the right to free speech and public meeting, and the right to petition for redress of grievances."

[39] (1897) LR 25 I.A. 1 at 6

31.1 In this respect, the address[40] made by ***Balgangadhar Tilak*** to the Jury, during the course of his trial, may also be noted. Some of the passages from the address were :-

> "To excite feelings of disaffection means that by your act you must heighten feelings of disaffection when they exist or create them when they do not. If you do not do anything to excite feelings, if you merely express, if you merely report, if you only express sentiments which exist at the time, surely your act does not come under Section 124A. Nay, more, you may create a feeling of disapprobation. I can say with impunity something is bad; it ought to be remedied. I have to write; I have a right to do that and if I find fault it is only natural that some ill-feeling is created. . . . So in this approbation some ill feeling is necessarily implied. That is the meaning of Explanation 2 to the Section; it refers to "Comments expressing disapprobation of the measures of the Government." When I say that Government is going wrong, evidently, I say something which the authorities may not like. That is not sedition; if that were so, there could be no progress at all and we shall have to be content at the end of the 20th century with what we have at present. True progress comes of agitation; and you are bound to consider the defects pointed out and discussed and the reforms proposed and to look to the real intention of the man. …..
>
> ….. ….. …..
>
> Then there is another expression to which I wish to draw your attention; and it is "Government established by law in British India". 'Government' here does not mean the Executive or the Judiciary but it means Government in the abstract. The word 'Government' is defined in the Indian Penal Code and includes any officer, even a polite constable. It does not mean that if I say a police man is not doing his duty then I am guilty of sedition. Go up higher. If certain officials have not been doing their duty, I have every right to say that these officials should be discharged; there should be stricter supervision and that particular departments should be altered. So long as the word "Government" is qualified by

[40] "Trial of Tilak": 2nd Edition., published by Publications Division, Ministry of Information and Broadcasting, Government of India.

the words "established by Law," how can it have the meaning given to it by a definition of the word ("Government") in a particular part in the Penal Code? The qualifying phrase makes it a quite different thing. It is "Government established by law." We shall have to come afterwards to the question whether Bureaucracy is Government or not? Whether the British Government is solely dependent upon the Bureaucracy? Can it not exist without it? The Bureaucracy may say so, it may be very flattering to them to say that the services of certain officers are indispensable to them but is it the meaning conveyed by the expression "Government established by law in British India"? Does it mean a "form of administration" and is it consistent with that meaning? So far as ideals are concerned they do not come under the Penal Code. I may say that a certain system of administration is better suited to the country and may try to spread that opinion. You may not agree with me but that is not the point. I have to express my opinion and so long as I do not create any disaffection I am allowed to express it freely. There can otherwise be no progress; progress would be impossible unless you allow intelligent gentlemen the right to express their opinion, to influence the public and get the majority of the public on their side. …

….. ….. …..

The question is, do you really intend as guardians of the liberty of the Press to allow as much liberty here in India as is enjoyed by the people of England? That is the point that you will have to very carefully consider. I wish to show you that mine is an Article written in controversy as a reply to an opponent. It was penned to defend the interests of my community. You may not agree with me in my views. Different communities have different views. And every community must have opportunity to express its own views. I have not come here to ask you any grace. I am prepared to stand by the consequences of my act. There is no question about it. I am not going to tell you that I wrote the article in a fit of madness. I am not a lunatic. I have written it believing it my duty to write in the interest of the public in this way, believing that that was the view of the community. I wanted to express it, believing that the interests of the community would not be otherwise safeguarded. Believe me when I say that it was both in the interest of the people and Government and this view should be placed before them. If you honestly

> go to the question like that it will be your duty to give a verdict to not guilty, whatever may be your opinion about me, even if you dislike me as much as you can. …..
>
> ….. ….. …..
>
> In a homogeneous country like England, there are parties like Conservatives, Liberals, Radicals and Nationalists; each man takes his own view of public events. Take, for instance, the Boer war; there were people who disapproved of it, though they were a very small minority. The majority of the nation determined upon going to war and the war did take place. Those who represented the view of the minority used arguments in favour of the Boers, they were called the pro-Boer party, the others used arguments against the Boers. So there was public opinion discussed on both sides and from both points of view. That is the beauty of a free press, which allows discussion in this way to the people of the country upon a particular subject. ….."

32. Having considered the decisions of the Privy Council in ***Balgangadhar Tilak***[30] and in ***King-Emperor v. Sadashiv Narayan Bhalero***[32] we must now deal with the decision of the Federal Court in ***Niharendu Dutt Majumdar v. The King Emperor***[31]. A passage from the decision of the Federal Court was quoted in ***Kedar Nath Singh v. State of Bihar***[2] but immediately preceding passage from said decision of the Federal Court is also noteworthy and was to the following effect:

> "The time is long past when the mere criticism of Governments was sufficient to constitute sedition, for it is recognized that the right to utter honest and reasonable criticism is a source of strength to a community rather than a weakness. Criticism of an existing system of Government is not excluded, nor even the expression of a desire for a different system altogether. The language of S. 124-A of the Penal Code, if read literally, even with the explanations attached to it, would suffice to make a surprising number of persons in this country guilty of sedition; but no one

supposes that it is to be read in this literal sense. The language itself has been adopted from English law, but it is to be remembered that in England the good sense of jurymen can always correct extravagant interpretations sought to be given by the executive Government or even by Judges themselves, and if in this country that check is absent, or practically absent, it becomes all the more necessary for the Courts, when a case of this kind comes before them, to put themselves so far as possible in the place of a jury, and to take a broad view, without refining overmuch in applying the general principles which underlie the law of sedition to the particular facts and circumstances brought to their notice.

What then are these general principles? We are content to adopt the words of a learned Judge, which are to be found in every book dealing with this branch of the criminal law: Page: "Sedition……embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquillity of the State and lead ignorant persons to subvert the Government. The objects of sedition generally are to induce discontent and insurrection, to stir up opposition to the Government, and to bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or disaffection, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or Government, the laws or the constitution of the realm and generally all endeavours to promote public disorder." Fitzgerald, J., in R. v. Sullivan[33]. It is possible to criticise one or two words or phrases in this passage; "loyalty" and "dis-loyalty," for example, have a non-legal connotation also, and it is very desirable that there should be no confusion between this and the sense in which the words are used in a legal context; but, generally speaking, we think that the passage accurately states the law as it is to be gathered from an examination of a great number of judicial pronouncements."

(Emphasis supplied)

33. These passages elucidate what was accepted by this Court in preference to the decisions of the Privy Council in ***Balgangadhar Tilak***[30] and in ***King-Emperor*** *v.* ***Sadashiv Narayan Bhalerao***[32]. The statements of law deducible from the decision in ***Kedar Nath Singh***[2] are as follows: -

a) "the expression "the Government established by law" has to be distinguished from the persons for the time being engaged in carrying on the administration. "Government established by law" is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted."

….. ….. …..

b) "any acts within the meaning of Section 124-A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence."

….. ….. …..

c) "comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal."

….. ….. …..

d) "A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder."

….. ….. …..

e) "The provisions of the Sections[41] read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence."

[41] The reference was to Sections 124A and 505 of the IPC.

> ….. ….. …..
>
> f) "It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order."
>
> ….. ….. …..
>
> g) "we propose to limit its operation only to such activities as come within the ambit of the observations of the Federal Court, that is to say, activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace."

As the statement of law at placetum (e) above indicates, it applies to cases under Sections 124-A and 505 of the IPC[3]. According to this Court only such activities which would be intended or have a tendency to create disorder or disturbance of public peace by resort to violence – are rendered penal.

34. Some of the decisions cited by the learned Counsel, touching upon the content and the extent of the right of the Press, may also be adverted to at this stage.

A) In the case of ***Indian Express Newspapers (Bombay) Private Ltd. & Ors. vs. Union of India & Ors.***[42]**,** this Court observed:

> **"25.** The freedom of press, as one of the members of the Constituent Assembly said, is one of the items around which the greatest and the bitterest of constitutional struggles have been waged in all countries where liberal constitutions prevail. The said freedom is attained at considerable

[42] (1985) 1 SCC 641

sacrifice and suffering and ultimately it has come to be incorporated in the various written constitutions. James Madison when he offered the Bill of Rights to the Congress in 1789 is reported as having said: "The right of freedom of speech is secured, the liberty of the press is expressly declared to be beyond the reach of this Government." [See 1 *Annals of Congress* (1789-96) p. 141]. Even where there are no written constitutions, there are well established constitutional conventions or judicial pronouncements securing the said freedom for the people. The basic documents of the United Nations and of some other international bodies to which reference will be made hereafter give prominence to the said right. The leaders of the Indian independence movement attached special significance to the freedom of speech and expression which included freedom of press apart from other freedoms During their struggle for freedom they were moved by the American Bill of Rights containing the First Amendment to the Constitution of the United States of America which guaranteed the freedom of the press Pandit Jawaharlal Nehru in his historic resolution containing the aims and objects of the Constitution to be enacted by the Constituent Assembly said that the Constitution should guarantee and secure to all the people of India among others freedom of thought and expression. He also stated elsewhere that "I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press" [See D.R. Mankekar: *The Press under Pressure* (1973) p. 25]. The Constituent Assembly and its various committees and sub-committees considered freedom of speech and expression which included freedom of press. also as a precious right. The Preamble to the Constitution says that it is intended to secure to all citizens among others liberty of thought, expression, and belief. It is significant that in the kinds of restrictions that may be imposed on the freedom of speech and expression, any reasonable restriction imposeable in the public interest is not one enumerated in clause (2) of Article 19. In *Romesh Thappar* v. *State of Madras*[20] and *Brij Bhushan case*[43] this Court firmly expressed its view that there could not be any kind of restrictions on the freedom of speech and expression other than those mentioned in Article 19(2) and thereby made it

[43] AIR 1950 SC 129 : 1950 SCR 605

clear that there could not be any interference with that freedom in the name of public interest."

….. ….. …..

32. In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities. The authors of the articles which are published in newspapers have to be critical of the actions of Government in order to expose its weaknesses. Such articles tend to become an irritant or even a threat to power.

….. ….. …..

33. Thomas I. Emerson in his article entitled "Toward, a General Theory of the First Amendment" [(1963) 72 Yale Law Journal 877 at p. 906] while dealing with the role of the judicial institutions in a democratic society and in particular of the Apex Court of U.S.A. in upholding the freedom of speech and expression writes:

> "The objection that our judicial institutions lack the political power and prestige to perform an active role in protecting freedom of expression against the will of the majority raises more difficult questions. Certainly judicial institutions must reflect the traditions, ideals and assumptions, and in the end must respond to the needs, claims and expectations, of the social order in which they operate. They must not, and ultimately cannot, move too far ahead or lag too far behind. The problem for the Supreme Court is one of finding the proper degree of responsiveness and leadership, or perhaps better, of short-term and long-term responsiveness. Yet in seeking out this position the Court should not underestimate the authority and prestige it has achieved over the years. Representing the "conscience of the community" it has come to possess a very real power to keep alive and vital the higher values and goals toward which our society imperfectly strives.... Given its prestige, it would appear that the power of the Court to protect

freedom of expression is unlikely to be substantially curtailed unless the whole structure of our democratic institutions is threatened."

34. What is stated above applies to the Indian courts with equal force. In *Romesh Thappar case*[20], *Brij Bhushan case*[43], *Express Newspapers (Private) Ltd.* v. *Union of India*[44], *Sakal Papers* (P) *Ltd.* v. *Union of India*[45] and *Bennett Coleman case*[46] this Court has very strongly pronounced in favour of the freedom of press. Of these, we shall refer to some observations made by this Court in some of them.

35. In *Romesh Thappar case*[20] this Court said at p. 602:

> "... (The freedom) lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse.... (But) 'it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits'."

36. In *Bennett Coleman case*[46] A.N. Ray, C.J. on behalf of the majority said at p. 796 (SCC p. 823, para 80) thus:

> "The faith of a citizen is that political wisdom and virtue will sustain themselves in the free market of ideas so long as the channels of communication are left open. The faith in the popular Government rests on the old dictum 'let the people have the truth and the freedom to discuss it and all will go well'. The liberty of the press remains an 'Ark of the Covenant' in every democracy.... The newspapers give ideas. The newspapers give the people the freedom to find out what ideas are correct."

37. In the very same case, Mathew, J. observed at p. 818: (SCC p. 846, paras 168, 169)

> "The constitutional guarantee of freedom of speech is not so much for the benefit of the press as it is for the benefit of the public. The freedom of speech

[44] AIR 1958 SC 578 : 1959 SCR 12
[45] AIR 1962 SC 305 : (1962) 3 SCR 842
[46] (1972) 2 SCC 788 : AIR 1973 SC 106 : (1973) 2 SCR 757

includes within its compass the right of all citizens to read and be informed. In *Time Inc*. v. *Hill* [385 US 374 : 17 L Ed 2d 456 : 87 S Ct 534 (1967)] the U.S. Supreme Court said:

> 'The constitutional guarantee of freedom of speech and press are not for the benefit of the press so much as for the benefit of all the people.' "

In *Griswold* v. *Connecticut*[47] the U.S. Supreme Court was of the opinion that the right of freedom of speech and press includes not only the right to utter or to print, but the right to read."

B) This Court in the case of ***S. Rangarajan v. P. Jagjivan Ram & Ors***.[48] held:

"36. The democracy is a Government by the people via open discussion. The democratic form of Government itself demands its citizens an active and intelligent participation in the affairs of the community. The public discussion with people's participation is a basic feature and a rational process of democracy which distinguishes it from all other forms of Government. The democracy can neither work nor prosper unless people go out to share their views. The truth is that public discussion on issues relating to administration has positive value. What Walter Lippmann said in another context is relevant here:

> "When men act on the principle of intelligence, they go out to find the facts.... When they ignore it, they go inside themselves and find out what is there. They elaborate their prejudice instead of increasing their knowledge."

43. Brandies, J., in *Whitney* v. *California*[49] propounded probably the most attractive free speech theory:

> "... that the greatest menace to freedom is an inert people; that public discussion is a political duty;. .. It is hazardous to discourage thought, hope and

[47] 381 US 479, 482 : 14 L Ed 2d 510 : 85 SCt 1678 (1965)
[48] 1989 (2) SCC 574
[49] 274 US 357, 375-78 (1927) : 71 L Ed 1045

> imagination; 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."

> **45.** The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a power keg".

35. Reliance was also placed on the decision of the Constitution Bench of this Court in ***The Superintendent, Central Prison, Fatehgarh and another v. Dr. Ram Manohar Lohia***[50]**,** which dealt with the expression "Public Order" appearing in Article 19 (2) of the Constitution, the relevant portion being :-

> "**9.** …… The expression "public order" has a very wide connotation. Order is the basic need in any organised society. It implies the orderly state of society or community in which citizens can peacefully pursue their normal activities of life. In the words of an eminent Judge of the Supreme Court of America "the essential rights are subject to the elementary need for order without which the guarantee of those rights would be a mockery". The expression has not

[50] AIR 1960 SC 633

been defined in the Constitution, but it occurs in List II of its Seventh Schedule and is also inserted by the Constitution (First Amendment) Act, 1951 in clause (2) of Article 19. The sense in which it is used in Article 19 can only be appreciated by ascertaining how the Article was construed before it was inserted therein and what was the defect to remedy which the Parliament inserted the same by the said amendment. The impact of clause (2) of Article 19 on Article 19(1)(*a*) before the said amendment was subject to judicial scrutiny by this Court in *Romesh Thappar* v. *State of Madras*[20]. There the Government of Madras, in exercise of their powers under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949, purported to issue an order whereby they imposed a ban upon the entry and circulation of the journal called the "Cross Roads" in that State. The petitioner therein contended that the said order contravened his fundamental right to freedom of speech and expression. At the time when that order was issued the expression "public order" was not in Article 19(2) of the Constitution; but the words "the security of the State" were there. In considering whether the impugned Act was made in the interests of security of the State, Patanjali Sastri, J., as he then was, after citing the observation of Stephen in his *Criminal Law of England*, states:

> "Though all these offences thus involve disturbances of public tranquillity and are in theory offences against public order, the difference between them being only a difference of degree, yet for the purpose of grading the punishment to be inflicted in respect of them they may be classified into different minor categories as has been done by the Indian Penal Code. Similarly, the Constitution, in formulating the varying criteria for permissible legislation imposing restrictions on the fundamental rights enumerated in Article 19(1), has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it, and made their prevention the sole justification for legislative abridgement of freedom of speech and expression, that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression …."

The learned Judge continued to state:

> "The Constitution thus requires a line to be drawn in the field of public order or tranquillity marking off, may be, roughly, the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of the peace of a purely local significance, treating for this purpose differences in degree as if they were differences in kind."

The learned Judge proceeded further to state:

> "We are therefore of opinion that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order."

This decision establishes two propositions viz. (*i*) maintenance of public order is equated with maintenance of public tranquillity; and (*ii*) the offences against public order are divided into two categories viz. (*a*) major offences affecting the security of the State, and (*b*) minor offences involving breach of purely local significance. This Court in *Brij Bhushan* v. *State of Delhi*[43] followed the earlier decision in the context of Section 7(1)(*c*) of the East Punjab Public Safety Act, 1949. Fazl Ali, J., in his dissenting judgment gave the expression "public order" a wider meaning than that given by the majority view. The learned Judge observed at p. 612 thus:

> "When we approach the matter in this way, we find that while 'public disorder' is wide enough to cover a small riot or an affray and other cases where peace is disturbed by, or affects, a small group of persons, 'public unsafety' (or insecurity of the State), will usually be connected with serious internal disorders and such disturbances of public tranquillity as jeopardize the security of the State."

This observation also indicates that "public order" is equated with public peace and safety. Presumably in an attempt to get over the effect of these two decisions, the expression "public order" was inserted in Article 19(2) of the Constitution by the Constitution (First Amendment) Act, 1951, with a view to bring in offences involving breach of purely local significance within the scope of permissible restrictions under clause (2) of Article 19. After the said amendment, this Court explained the scope of *Romesh Thapper's case*[20] in *State of Bihar* v. *Shailabala Devi*[51]. That case was concerned with the constitutional validity of Section 4(1)(*a*) of the Indian Press (Emergency Powers) Act, 1931. It deals with the words or signs or visible representations which incite to or encourage, or tend to incite to or encourage the commission of any offence of murder or any cognizable offence involving violence. Mahajan, J., as he then was, observed at p. 660:

> "The deduction that a person would be free to incite to murder or other cognizable offence through the press with impunity drawn from our decision in *Romesh Thapper case* could easily have been avoided as it was avoided by Shearer, J., who in very emphatic terms said as follows:
>
> > 'I have read and re-read the judgments of the Supreme Court, and I can find nothing in them myself which bear directly on the point at issue, and leads me to think that, in their opinion, a restriction of this kind is no longer permissible.'"

The validity of that section came up for consideration after the Constitution (First Amendment) Act, 1951, which was expressly made retrospective, and therefore the said section clearly fell within the ambit of the words "in the interest of public order". That apart the observations of Mahajan, J., as he then was, indicate that even without the amendment that section would have been good inasmuch as it aimed to prevent incitement to murder.

10. The words "public order" were also understood in America and England as offences against public safety or

[51] (1952) SCR 654

public peace. The Supreme Court of America observed in *Cantewell* v. *Connecticut*[52] thus:

> "The offence known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquillity. It includes not only violent acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot … When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order appears, the power of the State to prevent or punish is obvious."

The American decisions sanctioned a variety of restrictions on the freedom of speech in the interests of public order. They cover the entire gamut of restrictions that can be imposed under different heads in Article 19(2) of our Constitution. The following summary of some of the cases of the Supreme Court of America given in a well-known book on Constitutional law illustrates the range of categories of cases covering that expression. "In the interests of public order, the State may prohibit and punish the causing of 'loud and raucous noise' in streets and public places by means of sound amplifying instruments, regulate the hours and place of public discussion, and the use of the public streets for the purpose of exercising freedom of speech; provide for the expulsion of hecklers from meetings and assemblies, punish utterances tending to incite an immediate breach of the peace or riot as distinguished from utterances causing mere 'public inconvenience, annoyance or unrest'". In England also Acts like Public Order Act, 1936, Theatres Act, 1843 were passed: the former making it an offence to use threatening, abusive or insulting words or behaviour in any public place or at any public meeting with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be caused, and the latter was enacted to authorise the Lord Chamberlain to prohibit any stage play whenever he thought its public performance would militate against good manners, decorum and the preservation of the public peace. The reason underlying all the decisions is that if the freedom of speech was not restricted in the manner the relevant Acts did, public safety and tranquillity in the State would be affected.

[52] (1940) 310 US 296, 308

> **11.** But in India under Article 19(2) this wide concept of "public order" is split up under different heads. It enables the imposition of reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. All the grounds mentioned therein can be brought under the general head "public order" in its most comprehensive sense. But the juxtaposition of the different grounds indicates that, though sometimes they tend to overlap, they must be ordinarily intended to exclude each other. "Public order" is therefore something which is demarcated from the others. In that limited sense, particularly in view of the history of the amendment, it can be postulated that "public order" is synonymous with public peace, safety and tranquillity."
>
> (Emphasis supplied)

36. Having dealt with the applicability of Section 124A of the IPC[3] and the content of the rights of a citizen and of the Press, the next stage is to see whether the petitioner is right in his submission that no offence as alleged, has been made out. We need not set out the principles, on the basis of which an FIR or a Complaint or pending Criminal proceedings can be quashed. Those principles, post the decision of this Court in ***State of Haryana and Others vs. Bhajan Lal and Others***[53] are well settled. We may however refer to two decisions of this Court where, in the context of the alleged offences under Sections 153A and 505 of the IPC[3], the criminal proceedings were quashed.

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[53] (1992) Suppl 1 SCC 335

A) In ***Manzar Sayeed Khan vs. State of Maharashtra and Another***[54], it was laid down that the requisite intention to promote feelings of enmity or hatred between different classes of people, must be judged primarily by "the language of the book and the circumstances in which the book was written"; and accepted that the effect of the words must be judged from the standards of reasonable, strong minded, firm and courageous men. It was observed: -

> "**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* v. *Union of India*[55] this Court held that TV serial *Tamas* did not depict communal tension and violence and the provisions of Section 153-A IPC would not apply to

[54] (2007) 5 SCC 1
[55] (1988) 1 SCC 668

it. It was also not prejudicial to the national integration falling under Section 153-B IPC. Approving the observations of Vivian Bose, J. in *Bhagwati Charan Shukla* v. *Provincial Govt.*[56] 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*[55], SCC p. 676, para 13)"

B) In ***Patricia Mukhim vs. State of Meghalaya and Others***[57], the requisite intention to bring out the basic ingredient of offences under Sections 153A and 505 (1) (c) of the IPC[3] was found to be absent. This Court observed:-

> "13. In the instant case, applying the principles laid down by this Court as mentioned above, the question that arises for our consideration is whether the Facebook post-dated 04.07.2020 was intentionally made for promoting class/community hatred and has the tendency to provoke enmity between two communities. A close scrutiny of the Facebook post would indicate that the agony of the Appellant was directed against the apathy shown by the Chief Minister of Meghalaya, the Director General of Police and the Dorbar Shnong of the area in not taking any action against the culprits who attacked the non-tribals youngsters. The Appellant referred to the attacks on nontribals in 1979. At the most, the Facebook post can be understood to highlight the discrimination against nontribals in the State of Meghalaya. However, the Appellant made it clear that criminal elements have no community and immediate action has to be taken against persons who had indulged in the

[56] AIR 1947 Nag 1
[57] 2021 SCC OnLine SC 258

> brutal attack on non-tribal youngsters playing basketball. The Facebook post read in its entirety pleads for equality of non-tribals in the State of Meghalaya. In our understanding, there was no intention on the part of the Appellant to promote class/community hatred. As there is no attempt made by the Appellant to incite people belonging to a community to indulge in any violence, the basic ingredients of the offence under Sections 153 A and 505(1)(c) have not been made out. Where allegations made in the FIR or the complaint, even if they are taken on their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, the FIR is liable to be quashed[58]."

37. According to the respondents, apart from the offences spelt out in the FIR, certain other offences are also made out. The instant case, therefore, has to be seen from both the perspectives, namely whether any of the offences as stated in the FIR and whether those referred to in the submissions of the respondents, are made out or not.

38. Leaving aside two incorrect statements made in the FIR which were dealt with in paragraph 27 hereinabove, the following assertions from the talk show are relied upon to say that the offences as alleged are made out: -

> *"i) Our biggest failure has been that we do not have enough facilities to carry out testing.*
>
> *ii) Till now we do not have any information how many (PPE suits, N95 masks and masks of 3 ply) we have and how many will become available by when.*
>
> *iii) The Ventilators needed in other countries and in India, respiratory devices and sanitisers were being exported*

[58] State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335

till 24.3.2020 instead of keeping these for use in our country.

iv) That supply chains got disrupted due to blockage of roads and now it is being heard that transportation of essential goods has been allowed.

v) It is not difficult to imagine that when the supply chains have been closed, when the shops are closed, some people had gone to the extent of fearing food riots which have not happened in our country could happen.

vi) When people started returning from Mumbai .... That should have been a big signal for the Government about the effect the complete lockdown in the country can bring about, but no lessons were learnt."

39. We now consider these statements.

A) It is common knowledge that the countries all over the world found themselves wanting in terms of infrastructure and facilities to cope up with the effects of Covid-19 Pandemic. Considering the size of the population of this country, the testing facilities to gauge and check the spread and effect of the Pandemic, at least in the initial stages of the surge, were not exactly adequate. If in that light, the petitioner made any comments about testing facilities or PPE Suits, N-95 masks and masks of 3 ply, those comments in first two statements, cannot be anything other than appraisal of the situation then obtaining. It was not even the case of the respondents that these two statements were factually incorrect.

B) With regard to the third statement, the contention of the respondents was that the ban on export was imposed on 19.03.2020 and the said statement was therefore not quite correct. It was also submitted that the Petitioner produced no evidence of actual exports before the ban was imposed on 19.03.2020 and that there were no exports immediately proceeding the imposition of ban.

C) The effect of Nation-wide lockdown which came into effect from the midnight intervening 24.03.2020 and 25.03.2020, according to the Petitioner, resulted in disruption of supply chains due to blockage of roads. It was the submission of the respondents that by Consolidated Guidelines issued on 28.03.2020 (which was stated to be an order under Section 188 of the IPC[3]), adequate steps were directed to be taken to ensure that there was no disruption in supply of essential goods. It must be stated that the fourth statement did acknowledge that the transportation of essential goods was being allowed and, in that sense, it was more or less correct depiction of the state of affairs then prevailing.

D) The emphasis to a great extent, were, however, put on the fifth and the sixth statements and it was strongly contended that said statements not only gave factually incorrect information but amounted to incite the general

public and that it was because of such incorrect information, the movement of migrant workers had begun.

On the other hand, reliance was placed by the petitioner on the interview of former Chief Statistician reported on 28.03.2020 that if food requirements of migrant workers were not fulfilled amid countrywide lockdown, food riots could be a real possibility. It was submitted that by the time the talk show was uploaded, the movement of migrant workers had already started and was at the peak.

40. It may be relevant to note here that Writ Petition (C) No.468 of 2020 (*Alakh Alok Srivastava v. Union of India etc*.) and connected petition[59], filed on 29.03.2020 by two Advocates, sought to highlight the plight of migrant workers. These matters came up on 31.03.2020 before this Court when it was observed:-

> "In the instant writ petitions, we are concerned about the migrant labourers who have started leaving their places of work for their home villages/towns located at distant places. For example, thousands of migrant labourers left Delhi to reach their homes in the States Uttar Pradesh and Bihar, by walking on the highways.
>
> We are informed that the labourers who are unemployed due to lock down were apprehensive about their survival. Panic was created by some fake news that the lock down would last for more than three months.
>
> ….. ….. …..

[59] Writ Petition (C) No.469 of 2020 (Rashmi Bansal v. Union of India)

During the course of hearing, the Solicitor General of India made a statement that the information received by the Control Room today at 2.30 A.M. showed that 21,064 relief camps have been set up by various State Governments/Union Territories where the migrant labourers have been shifted and they are being provided with basic amenities like food, medicines, drinking water, etc. According to the Status Report, 6,66,291 persons have been provided shelters and 22,88,279 persons have been provided food.

….. ….. …..

The Solicitor General of India has also referred to the Status Report to make a submission that the exodus of migrant labourers was triggered due to panic created by some fake/misleading news and social media.

….. ….. …..

While informing this Court about the steps taken by the Government of India to ensure that the migrant labourers are being shifted to nearby shelters/relief camps from place they were found to be walking and basic amenities being provided to them, the Union of India has sought a direction from this Court to the State Governments and the Union Territories to implement the directions issued by the Central Government. A further direction was sought to prevent fake and inaccurate reporting whether intended or not, either by electronic print or social medial which will cause panic in the society.

….. ….. …..

The migration of large number of labourers working in the cities was triggered by panic created by fake news that the lock down would continue for more than three months. Such panic driven migration has caused untold suffering to those who believed and acted on such news. In fact, some have lost their lives in the process. It is therefore not possible for us to overlook this menace of fake news either by electronic, print or social media.

Section 54 of the Disaster Management Act, 2005 provides for punishment to a person who makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic. Such person shall be punished with imprisonment which may extend to one year or with fine.
Disobedience to an order promulgated by a public servant would result in punishment under section 188 of the Indian

> Penal Code. An advisory which is in the nature of an order made by the public authority attracts section 188 of the Indian Penal Code.
>
> We trust and expect that all concerned viz., State Governments, Public Authorities and Citizens of this country will faithfully comply with the directives, advisories and orders issued by the Union of India in letter and spirit in the interest of public safety.
>
> In particular, we expect the Media (print, electronic or social) to maintain a strong sense of responsibility and ensure that unverified news capable of causing panic is not disseminated. A daily bulletin by the Government of India through all media avenues including social media and forums to clear the doubts of people would be made active within a period of 24 hours as submitted by the Solicitor General of India. We do not intend to interfere with the free discussion about the pandemic, but direct the media refer to and publish the official version about the developments."

41. The developments referred to in the aforementioned Order show that the movement of migrant workers back to their hometown or villages had posed an alarming situation. The writ petitions did bring out those issues, in response to which the concern shown by the Government and the steps undertaken by the authorities were placed on record. This Court suggested that a daily bulletin by the Government of India be made active so that correct and precise information was made available to the general public and the exodus of migrant workers could thus be checked. However, the Order also shows the magnitude of the problem which required about

6,66,291 persons to be provided shelter and 22,88,279 persons to be provided food.

42. What was prevailing on 30.03.2020 was therefore clear and migrant workers in huge numbers were moving towards their hometowns/villages. In the circumstances, there would naturally be some apprehension about the shelter and food to be provided to them *en-route*. The former Chief Statistician had expressed a possibility with the intent to invite the attention of the authorities. If the petitioner in his talk show uploaded on 30.03.2020, that is even before the matter was taken up by this Court, made certain assertions in his 5th and 6th statement, he would be within his rights to say that as a Journalist he was touching upon issues of great concern so that adequate attention could be bestowed to the prevailing problems. It cannot be said that the petitioner was spreading any false information or rumours. It is not the case of the respondents that the migrant workers started moving towards their hometowns/villages purely as a result of the statements made by the petitioner. Such movement of migrant workers had begun long before. In the circumstances, these statements can neither be taken to be an attempt to incite migrant workers to start moving towards their hometowns or villages nor can it be taken to be an incitement for causing any food riots.

The situation was definitely alarming around 30.03.2020 and as a journalist if the petitioner showed some concern, could it be said that he committed offences as alleged.

43. The Principles culled out in paragraph 33 hereinabove from the decision of Court in ***Kedar Nath Singh***[2] show that a citizen has a right to criticize or comment upon the measures undertaken by the Government and its functionaries, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder; and that it is only when the words or expressions have pernicious tendency or intention of creating public disorder or disturbance of law and order that Sections 124A and 505 of the IPC[3] must step in.

In our view, the statements by the petitioner as mentioned hereinabove, if read in the light of the principles emanating from the decision in ***Kedar Nath Singh***[2] and against the backdrop of the circumstances when they were made, can at best be termed as expression of disapprobation of actions of the Government and its functionaries so that prevailing situation could be addressed quickly and efficiently. They were certainly not made with the intent to incite people or showed tendency to create disorder or disturbance of public peace by resort to violence. The petitioner was within the permissible limits laid down in the decision of this

Court in ***Kedar Nath Singh***[2]. It may be that certain factual details in the 3rd statement regarding the date when the ban came into effect were not completely correct. However, considering the drift of the entire talk show and all the statements put together it cannot be said that the petitioner crossed the limits set out in the decision of this Court in ***Kedar Nath Singh***[2].

44. We are, therefore, of the firm view that the prosecution of the petitioner for the offences punishable under Sections 124A and 505 (1) (b) of the IPC[3] would be unjust. Those offences, going by the allegations in the FIR and other attending circumstances, are not made out at all and any prosecution in respect thereof would be violative of the rights of the petitioner guaranteed under Article 19(1)(a) of the Constitution.

45. The other offending provision referred to in the FIR is Section 501 of the IPC[3] which is printing or engraving a matter which is defamatory to any person. As a matter of fact, the cognizance with respect to an offence punishable under Chapter XXI of the IPC[3] (Section 501 of the IPC[3] is part of said Chapter) can be taken by a Court only upon a complaint made by the person aggrieved. Without going into such technicalities, in our view, there is nothing defamatory in the statements made by the petitioner. Further, the statements of the petitioner would be covered by the second and third exceptions to Section 499 of the IPC[3]. In some of the cases

decided by this Court, for example, in ***Jawaharlal Darda and Others vs. Manoharrao Ganpatrao Kapsikar and Another***[60], ***Rajendra Kumar Sitaram Pande and Others vs. Uttam and Another***[61], ***Vivek Goenka and Others vs. Y.R. Patil***[62], and ***S. Khushboo vs. Kanniammal and Another***[63], relying on exceptions to Section 499 of the IPC[3], the criminal proceeding initiated against the accused were quashed. Thus, the instant proceedings, in so far as Section 501 IPC[3] is concerned, also deserve to be quashed.

46. The other provision referred to in the FIR was Section 268 of the IPC[3] which is nothing but the definition of "Public Nuisance" and is not a penal provision in itself which prescribes any punishment. It was also not the case of the respondent that any penal provision involving element of "Public Nuisance" was attracted in the instant case.

47. Thus, all the offences set out in the FIR, in our considered view, are not made out at all.

48. We now turn to the case with regard to the offences which were not spelt out in the FIR. It was contended by the respondents that in addition to the offences specifically set out in the FIR, the petitioner would also be

[60] (1998) 4 SCC 112
[61] (1999) 3 SCC 134
[62] (2000) 9 SCC 87
[63] (2010) 5 SCC 600

guilty of the offences punishable under Sections 52 and 54 of the DM Act[1] and Section 188 of the IPC[3]. According to the respondents, the statements made by the petitioner during the Talk Show amounted to circulating a false alarm and would therefore be covered by Section 54 of the DM Act[1]; and that the petitioner would also be guilty of having violated communications dated 24.3.2020 and 28.3.2020 (set out earlier in paragraph 14) and thereby committed offences under Section 188 of the IPC[3].

49. The response of Mr. Vikas Singh, learned Senior Advocate for the petitioner was that by virtue of Section 60[64] of the DM Act[1], the offences punishable under the provisions of the DM Act[1] could be taken cognizance of only upon a complaint being made by the certain designated officials or functionaries. Similarly, in respect of offence under Section 188 of the IPC[3], by virtue of Section 195 of the Code, cognizance could be taken only upon a complaint in writing made by the concerned public servant whose orders were allegedly violated or by someone who was administratively superior to such public servant. These statutory requirements having not

[64] 60. Cognizance of offences.—No court shall take cognizance of an offence under this Act except on a complaint made by—
(a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or
(b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid

been satisfied, the submission that the offences punishable under the DM Act[1] and under Section 188 of the IPC[3] were made out, was required to be rejected. Reliance was placed by him on the decisions of this Court in ***Daulat Ram v. State of Punjab***[65] and in ***C. Muniappan and Others v. State of Tamil Nadu***[66] as well as cases referred to in ***C. Muniappan***[66].

The other facet of the submission was that even on merits, the statements made by the petitioner in his Talk Show did not satisfy the requirements of both said statutory provisions and therefore the petitioner was entitled to the relief prayed for.

50. In reply, Mr. S.V. Raju, learned Additional Solicitor General submitted that the injunctions spelt out in Section 60 of the DM Act[1] and Section 195 of the Code would come into play only at the stage of cognizance by the Court and as such there would not be any bar to the invocation of these provisions at a stage anterior to the stage of cognizance.

51. We need not go into the technical issue whether the initiation of the proceedings in respect of the offences punishable under DM Act[1] and/or under Section 188 of the IPC[3] could only be after an appropriate complaint

[65] AIR 1962 SC 1206
[66] (2010) 9 SCC 567

would be made in writing as submitted by the petitioner, as in our considered view, none of these offences as submitted by the respondents get attracted in the instant matter.

A) Section 188 of the IPC[3] deals with "Disobedience to order duly promulgated by public servant". If a person, though directed *inter alia* to abstain from a certain act, disobeys a direction issued by a Public Servant lawfully empowered to promulgate such direction or order, Section 188 of the IPC[3] may get attracted. The communications dated 24.3.2020 and 28.3.2020 which have been quoted earlier were pressed into service and it was submitted that said communications which everyone was bound and obliged to follow, were violated by the petitioner. We have gone through these communications and in our view, there was nothing therein which was violated as a result of the Talk Show uploaded by the petitioner. An attempt was then made to rely on the order dated 31.3.2020[7] to submit that this Court had issued certain directions and expected the media to maintain strong sense of responsibility and ensure that unverified news capable of causing panic was not disseminated. First, the direction was issued on 31.3.2020 *i.e.* after the episode was uploaded on 30.3.2020 and secondly, we have not found any infirmity or illegality in the statements made by the petitioner, on the basis of which it could be possibly be said that he was

attempting to disseminate any news capable of causing panic. Consequently, the provisions of Section 188 of the IPC[3] would not get attracted at all.

B) Section 52 of the DM Act[1] deals with the lodging of a false claim by a person for obtaining any relief, assistance, etc., which provision has nothing to do with the present fact situation. Section 54 deals with cases where a person makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic. We have already held that the statements made by the petitioner were within the limits prescribed by the decision of this Court in ***Kedar Nath Singh***[2] and that the statements were without any intent to incite people for creating public disorder. It was not even suggested that as a result of statements made by the petitioner any situation of panic had resulted in any part of the country.

52. In the circumstances, without going into the technicalities whether the initiation of the proceedings could only be through a complaint filed in conformity with Section 60 of the DM Act[1] or Section 195 of the Code, in our view, the provisions of the DM Act[1] or Section 188 of the IPC[3] are not attracted at all.

53. Consequently, we accept the first prayer made by the petitioner in this Writ Petition and quash FIR No.0053 dated 6.5.2020 registered at Police Station Kumarsain, District Shimla, Himachal Pradesh and any proceedings arising therefrom. We must however clarify that the issues concerning ownership of HW News which had aired the talk show or the nature and effect of violation, if any, of the Norms of Journalistic conduct framed by the Press Council of India, have not been gone into by us as they do not strictly are of any concern for determining first prayer made in the writ petition.

54. We now come to the second prayer made in the writ petition, in support of which reliance was placed by the petitioner on the decisions of this Court in ***Jacob Mathew***[4] and ***Lalita Kumari***[5]. In ***Jacob Mathew***[4], a Bench of three Judges of this Court issued certain guidelines with respect to the prosecution of medical professionals.

> "***Guidelines — Re: prosecuting medical professionals***
> **50.** As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes such prosecutions are filed by private complainants and sometimes by the police on an FIR being lodged and cognizance taken. The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to a rash or negligent act within the domain of criminal law under Section 304-A IPC. The criminal process once initiated subjects the medical

professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered to his reputation cannot be compensated by any standards.

51. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasise the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefer recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

52. Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced *prima facie* evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the *Bolam*[67] *test* to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a

[67] *Balam vs. Friern Hospital Management Committee:* (1957) 1 WLR 582 : (1957) 2 All ER 118 (QBD)

> charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld."
>
> (Emphasis supplied)

55. Before issuing the aforesaid guidelines, this Court considered the illustrations mentioned below Sections 88, 92 and 93 of the IPC[3] and some relevant decisions, whereafter conclusions were summed up as under:-

> "***Conclusions summed up***
> **48.** We sum up our conclusions as under:
>
> (*1*) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in *Law of Torts*, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: "duty", "breach" and "resulting damage".
>
> (*2*) Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a

practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(*3*) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(*4*) The test for determining medical negligence as laid down in *Bolam case*[67] holds good in its applicability in India.

> (*5*) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.
>
> (*6*) The word "gross" has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be "gross". The expression "rash or negligent act" as occurring in Section 304-A IPC has to be read as qualified by the word "grossly".
>
> (*7*) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent."

56. ***Bolam**'s*[67] case referred to in conclusion (4) was dealt with in paragraph 20 of the decision as follows:-

> "**20.** The water of *Bolam*[67] test has ever since flown and passed under several bridges, having been cited and dealt with in several judicial pronouncements, one after the other and has continued to be well received by every shore it has touched as neat, clean and a well-condensed one. After a review of various authorities Bingham, L.J. in his speech

in *Eckersley* v. *Binnie*[68] test in the following words: (Con LR p. 79)

> "From these general statements it follows that a professional man should command the corpus of knowledge which forms part of the professional equipment of the ordinary member of his profession. He should not lag behind other ordinary assiduous and intelligent members of his profession in the knowledge of new advances, discoveries and developments in his field. He should have such an awareness as an ordinarily competent practitioner would have of the deficiencies in his knowledge and the limitations on his skill. He should be alert to the hazards and risks in any professional task he undertakes to the extent that other ordinarily competent members of the profession would be alert. He must bring to any professional task he undertakes no less expertise, skill and care than other ordinarily competent members of his profession would bring, but need bring no more. The standard is that of the reasonable average. The law does not require of a professional man that he be a paragon combining the qualities of polymath and prophet." (*Charlesworth & Percy*, *ibid*., para 8.04)"

57. What the decision makes clear is that before a medical professional is prosecuted for negligence in criminal law, some threshold requirements ought to be satisfied, otherwise an unwarranted prosecution may not only result in great prejudice to the concerned medical professional but would also not instill a sense of confidence in the medical professionals for discharging their duties. Considering Section 88 of the IPC[3] falling in

[68] (1988) 18 Con LR 1

Chapter titled "General Exceptions" and various illustrations as stated above, adequate protection was found necessary to be extended to medical professionals, whereafter aforestated guidelines were issued by this Court.

58. The Constitution Bench of this Court in ***Lalita Kumari's***[5] was called upon to consider, *inter alia*, the effect of Section 154 of the IPC[3]. One of the questions dealt with by the Constitution Bench was whether the police would be required to make any preliminary inquiry before registration of an FIR. Taking note of the decision of this Court in ***Jacob Mathew***[4], this Court in ***Lalita Kumari's***[5] case observed:

> "***Exceptions***
> **115.** Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.
>
> **116.** In the context of medical negligence cases, in *Jacob Mathew*[4] , it was held by this Court as under : (SCC p. 35, paras 51-52)
>
> > "*51*. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasise the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably

the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefer recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

52. Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the *Bolam*[67] test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld."

117. In the context of offences relating to corruption, this Court in *P. Sirajuddin* v. *State of Madras*[69], expressed the need for a preliminary inquiry before proceeding against public servants.

118. Similarly, in *CBI* v. *Tapan Kumar Singh*[70], this Court has validated a preliminary inquiry prior to registering an FIR only on the ground that at the time the first information is received, the same does not disclose a cognizable offence.

119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

Thereafter, directions were issued in paragraph 120 of the decision and direction 120.6 was as under:

"***Conclusion/Directions***
120. In view of the aforesaid discussion, we hold:

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[69] (1970) 1 SCC 595 : 1970 SCC (Cri) 240
[70] (2003) 6 SCC 175 : 2003 SCC (Cri) 1305

> ….. ….. …..
>
> **120.6.** As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
>
> (*a*) Matrimonial disputes/family disputes
>
> (*b*) Commercial offences
>
> (*c*) Medical negligence cases
>
> (*d*) Corruption cases
>
> (*e*) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.
>
> The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."

59. We may now notice the relevant observations in ***P. Sirajuddin, Etc. vs. State of Madras, Etc.***[71], which were:-

> **"17.** In our view the procedure adopted against the appellant before the laying of the first information report though not in terms forbidden by law, was so unprecedented and outrageous as to shock one's sense of justice and fairplay. No doubt when allegations about dishonesty of a person of the appellant's rank were brought to the notice of the Chief Minister it was his duty to direct as enquiry into the matter. The Chief Minister in our view pursued the right course. The High Court was not impressed by the allegation of the appellant that the Chief Minister was moved to take an initiative at the instance of person who was going to benefit by the retirement of the appellant and who was said to be a relation of the Chief Minister. The High Court rightly held that the relationship between the said person and the Chief Minister, if any, was so distant that it could not possibly have

[71] (1970) 1 SCC 595

influenced him and we are of the same view. Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can of taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. The enquiring officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. The means adopted no less than the end to be achieved must be impeccable. In ordinary departmental proceedings against a Government servant charged with delinquency, the normal practice before the issue of a charge-sheet is for some one in authority to take down statements of persons involved in the matter and to examine documents which have a bearing on the issue involved. It is only thereafter that a charge-sheet is submitted and a full-scale enquiry is launched. When the enquiry is to be held for the purpose of finding out whether criminal proceedings are to be restored to the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the delinquent officer and documents bearing on the same to find out whether there is prima facie evidence of guilt of the officer. Thereafter the ordinary law of the land must take its course and further inquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report.

…... ….. …..

21. In our view the enquiring officer pursued the investigation with such zeal and vigour that he even enquired into and took down statements as persons who were supposed to have provided the appellant with articles of food

> worth trifling sums of money long before the launching of the enquiry. The whole course of investigation as disclosed in the affidavits is suggestive of some pre-determination of the guilt of the appellant. The enquiring officer was a high-ranking police officer and it is surprising that simply because he was technically not exercising power under Chapter 14 of the Criminal Procedure Code in that a formal first information report had not been lodged he overlooked or deliberately overstepped the limits of investigation contained in the said chapter. He recorded self-incriminating statements of a number of persons and not only secured their signatures thereto obviously with the idea of pinning them down to those but went to the length of providing certificates of immunity to at least two of them from the evil effects of their own misdeeds as recorded. It was said that the certificates were given after the statements had been signed. It is difficult to believe that the statements could have been made before the grant of oral assurances regarding the issue of written certificates. There can be very little doubt that the persons who were given such immunity had made the statements incriminating themselves and the appellant under inducement, threat or promise as mentioned in Section 24 of the Indian Evidence Act."

The statement in paragraph 17 certainly spoke of requirement of a preliminary inquiry before a first information report is lodged against a public servant.

60. Mr. Vikas Singh, learned Senior Advocate for the petitioner strongly relied upon paragraph 120.6 of ***Lalita Kumari***[5] to submit that the category of cases in which preliminary inquiry could possibly be insisted upon were detailed by this Court but it was clearly stated that such categorisation was only illustrative and not exhaustive of all conditions

which may warrant preliminary enquiry. It was submitted that there was strong similarity between the medical professionals and journalists and the latter were also entitled to certain safeguards and protection; that journalists would also discharge function of educating and altering the public in general and as such they, as a class would also require similar protection.

On the other hand, Mr. S.V. Raju, learned Additional Solicitor General relied upon two recent decisions in ***Union of India*** v. ***State of Maharashtra and others***[72] and in ***Social Action Forum For Manav Adhikar and another*** v. ***Union of India, Ministry of Law and Justice and others***[73] of this Court rendered by Benches of three Judges where directions similar to those issued in the case of ***Jacob Mathew***[4] were not accepted.

61. In ***Rajesh Sharma and others*** v. ***State of Uttar Pradesh and another***[74] a Bench of two Judges of this Court (to which one of us, Lalit, J. was a party) issued following directions in cases where the offence alleged was one punishable under Section 498-A of the IPC[3]:-

> "**19.** Thus, after careful consideration of the whole issue, we consider it fit to give the following directions:
> **19.1** In every district one or more Family Welfare Committees be constituted by the District Legal Services

[72] (2020) 4 SCC 761
[73] (2018) 10 SCC 443
[74] (2018) 10 SCC 472

Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.

19.2. The Committees may be constituted out of paralegal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.

19.3. The Committee members will not be called as witnesses.

19.4. Every complaint under Section 498-A received by the police or the Magistrate be referred to and looked into by such Committee. Such Committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.

19.5. Report of such Committee be given to the authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.

19.6. The Committee may give its brief report about the factual aspects and its opinion in the matter.

19.7. Till report of the Committee is received, no arrest should normally be effected.

19.8. The report may be then considered by the investigating officer or the Magistrate on its own merit.

19.9. Members of the Committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.

19.10. The members of the Committee may be given such honorarium as may be considered viable.

19.11. It will be open to the District and Sessions Judge to utilise the cost fund wherever considered necessary and proper.

19.12. Complaints under Section 498-A and other connected offences may be investigated only by a designated investigating officer of the area. Such designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today.

19.13 In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior judicial officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord.

19.14 If a bail application is filed with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/custody and interest of justice must be carefully weighed.

19.15. In respect of persons ordinarily residing out of India impounding of passports or issuance of red corner notice should not be a routine.

19.16. It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the court to whom all such cases are entrusted.

19.17. Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by videoconferencing without adversely affecting progress of the trial.

> **19.18.** These directions will not apply to the offences involving tangible physical injuries or death."

Direction No.19.4 had thus contemplated referral of every complaint under Section 498A IPC[3] to a Committee and it was only after the report of the Committee, arrest if at all, could be effected. In terms of direction 19.12 it was directed that all complaints under Section 499A IPC[3] be investigated only by a Designated Investigating Officer of the area. While issuing these directions, this Court had *inter alia* relied upon the decision in ***Arnesh Kumar*** v. ***State of Bihar***[75] as well as the decision in ***Lalita Kumari***[7].

62. The correctness of the decision in ***Rajesh Sharma and others***[72] was questioned before a Bench of three Judges in ***Social Action Forum For Manav Adhikar and another*** v. ***Union of India, Ministry of Law and Justice and others***[76]**.** This Court in paragraph 33 of its Judgment referred to paragraph 120.6 of the decision in ***Lalita Kumari***[5] and thereafter made following observations:-

> "**37.** On a perusal of the aforesaid paragraphs, we find that the Court has taken recourse to fair procedure and workability of a provision so that there will be no unfairness and unreasonableness in implementation and for the said purpose, it has taken recourse to the path of interpretation. The core issue is whether the Court in *Rajesh*

[75] (2014) 8 SCC 273
[76] (2018) 10 SCC 443

Sharma[72] could, by the method of interpretation, have issued such directions. On a perusal of the directions, we find that the Court has directed constitution of the Family Welfare Committees by the District Legal Services Authorities and prescribed the duties of the Committees. The prescription of duties of the Committees and further action therefor, as we find, are beyond the Code and the same does not really flow from any provision of the Code. There can be no denial that there has to be just, fair and reasonable working of a provision. The legislature in its wisdom has made the offence under Section 498-A IPC cognizable and non-bailable. The fault lies with the investigating agency which sometimes jumps into action without application of mind. The directions issued in *Arnesh Kumar*[73] are in consonance with the provisions contained in Section 41 CrPC and Section 41-A CrPC. Similarly, the guidelines stated in *Joginder Kumar* v. *State of U.P.*[77], and *D.K. Basu* v. *State of W.B.*[78], are within the framework of the Code and the power of superintendence of the authorities in the hierarchical system of the investigating agency. The purpose has been to see that the investigating agency does not abuse the power and arrest people at its whim and fancy.

38. In *Rajesh Sharma*[72], there is introduction of a third agency which has nothing to do with the Code and that apart, the Committees have been empowered to suggest a report failing which no arrest can be made. The directions to settle a case after it is registered is not a correct expression of law. A criminal proceeding which is not compoundable can be quashed by the High Court under Section 482 CrPC. When settlement takes place, then both the parties can file a petition under Section 482 CrPC and the High Court, considering the bona fide of the petition, may quash the same. The power rests with the High Court. In this regard, we may reproduce a passage from a three-Judge Bench in *Gian Singh* v. *State of Punjab*[79], In the said case, it has been held that:

> "*61*. … Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (*i*) to secure the ends of justice, or (*ii*) to prevent abuse of

[77] (1994) 4 SCC 260
[78] (1997) 1 SCC 416
[79] (2012) 10 SCC 303

> the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim."

39. Though *Rajesh Sharma*[72] takes note of *Gian Singh*[78], yet it seems to have applied it in a different manner. The seminal issue is whether these directions could have been issued by the process of interpretation. This Court, in furtherance of a fundamental right, has issued directions in the absence of law in certain cases, namely, *Lakshmi Kant Pandey* v. *Union*

of India[80], *Vishaka* v. *State of Rajasthan*[81] and *Common Cause* v. *Union of India*[82], and some others. In the obtaining factual matrix, there are statutory provisions and judgments in the field and, therefore, the directions pertaining to constitution of a committee and conferment of power on the said committee are erroneous. However, the directions pertaining to Red Corner Notice, clubbing of cases and postulating that recovery of disputed dowry items may not by itself be a ground for denial of bail, would stand on a different footing. They are protective in nature and do not sound a discordant note with the Code. When an application for bail is entertained, proper conditions have to be imposed but recovery of disputed dowry items may not by itself be a ground while rejecting an application for grant of bail under Section 498-A IPC. That cannot be considered at that stage. Therefore, we do not find anything erroneous in Directions 19.14 and 19.15. So far as Directions 19.16 and 19.17 are concerned, an application has to be filed either under Section 205 CrPC or Section 317 CrPC depending upon the stage at which the exemption is sought.

…. ….. …..

42. In the aforesaid analysis, while declaring the directions pertaining to Family Welfare Committee and its constitution by the District Legal Services Authority and the power conferred on the Committee is impermissible. Therefore, we think it appropriate to direct that the investigating officers be careful and be guided by the principles stated in *Joginder Kumar*[76], *D.K. Basu*[77], *Lalita Kumari*[5] and *Arnesh Kumar*[73]. It will also be appropriate to direct the Director General of Police of each State to ensure that the investigating officers who are in charge of investigation of cases of offences under Section 498-A IPC should be imparted rigorous training with regard to the principles stated by this Court relating to arrest.

43. In view of the aforesaid premises, the directions contained in paras 19.1 to 19.11 as a whole are not in accord with the statutory framework and the direction issued in para 19.12 shall be read in conjunction with the direction given hereinabove.

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80 (1984) 2 SCC 244
81 (1997) 6 SCC 241
82 (2018) 5 SCC 1

> **44.** Direction 19.13 is modified to the extent that if a settlement is arrived at, the parties can approach the High Court under Section 482 of the Code of Criminal Procedure and the High Court, keeping in view the law laid down in *Gian Singh*[78], shall dispose of the same.
>
> **45.** As far as Directions 19.14, 19.15, 19.16 and 19.17 are concerned, they shall be governed by what we have stated in para 39.
>
> **46.** With the aforesaid modifications in the directions issued in *Rajesh Sharma*[73], the writ petitions and criminal appeal stand disposed of. There shall be no order as to costs."

It was thus held that directions 19.1 to 19.11 were not in conformity with the statutory framework, while directions 19.12 to 19.17 were suitably modified.

63. A Bench of two Judges of this Court (to which one of us i.e. Lalit, J. was a party) in its decision in ***Dr. Subhash Kashinath Mahajan*** v. ***State of Maharashtra and another***[83] issued following directions in connection with prosecutions instituted in relation to the offences punishable under the provisions of the Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act, 1989; (the "Atrocities Act", or "the 1989 Act", for short):

> "**79.** Our conclusions are as follows:
>
> **79.1.** Proceedings in the present case are clear abuse of process of court and are quashed.

[83] (2018) 6 SCC 454

> **79.2.** There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in *Pankaj D. Suthar* v. *State of Gujarat*[84], and *N.T. Desai* v. *State of Gujarat*[85], and clarify the judgments of this Court in *State of M.P.* v. *Ram Kishna Balothia*[86], and *Manju Devi* v. *Onkarjit Singh Ahluwalia*[87];
>
> **79.3.** In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the SSP which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinised by the Magistrate for permitting further detention.
>
> **79.4.** To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.
>
> **79.5.** Any violation of Directions 79.3 and 79.4 will be actionable by way of disciplinary action as well as contempt.
>
> **79.6.** The above directions are prospective."

During the course of its decision, the Bench had noticed paragraph 120.6 of the decision in ***Lalita Kumari***[5] as well as the decision in ***P. Sirajuddin***[69]**.** In terms of directions in paragraph 79.3 and 79.4, it was

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84 (1992) 1 Guj LR 405
85 (1997) 2 Guj LR 942
86 (1995) 3 SCC 221 : 1995 SCC (Cri) 439
87 (2017) 13 SCC 439 : (2017) 4 SCC (Cri) 662

directed that an arrest of a public servant could be effected only after approval of the appointing authority and that of a non-public servant could be effected only after approval by the Special Superintendent of Police; that the reasons for arrest could be scrutinised by the Magistrate for permitting further detention; and that a preliminary enquiry be conducted by the DSP concerned to find out whether the allegations making out a case under the provisions of Atrocities Act were frivolous or motivated.

64. Union of India being aggrieved, filed Review Petition questioning the correctness of the directions issued in ***Dr. Subhash Kashinath Mahajan***[82]. A Bench of three Judges of this Court considered the matter in ***Union of India*** v. ***State of Maharashtra and others***[70]. Various decisions were noticed by this Court and it was concluded:

> "***In re : Sanction of the appointing authority***
>
> **59.** Concerning public servants, the provisions contained in Section 197 CrPC provide protection by prohibiting cognizance of the offence without the sanction of the appointing authority and the provision cannot be applied at the stage of the arrest. That would run against the spirit of Section 197 CrPC. Section 41 CrPC authorises every police officer to carry out an arrest in case of a cognizable offence and the very definition of a cognizable offence in terms of Section 2(*c*) CrPC is one for which police officer may arrest without warrant.
>
> **60.** In case any person apprehends that he may be arrested, harassed and implicated falsely, he can approach the High

Court for quashing the FIR under Section 482 as observed in *State of Orissa* v. *Debendra Nath Padhi*[88].

61. While issuing guidelines mentioned above approval of appointing authority has been made imperative for the arrest of a public servant under the provisions of the Act in case, he is an accused of having committed an offence under the 1989 Act. Permission of the appointing authority to arrest a public servant is not at all statutorily envisaged; it is encroaching on a field which is reserved for the legislature. The direction amounts to a mandate having legislative colour which is a field not earmarked for the courts.

62. The direction is discriminatory and would cause several legal complications. On what basis the appointing authority would grant permission to arrest a public servant? When the investigation is not complete, how can it determine whether public servant is to be arrested or not? Whether it would be appropriate for appointing authority to look into case diary in a case where its sanction for prosecution may not be required in an offence which has not happened in the discharge of official duty. Approaching appointing authority for approval of arrest of a public servant in every case under the 1989 Act is likely to consume sufficient time. The appointing authority is not supposed to know the ground realities of the offence that has been committed, and arrest sometimes becomes necessary forthwith to ensure further progress of the investigation itself. Often the investigation cannot be completed without the arrest. There may not be any material before the appointing authority for deciding the question of approval. To decide whether a public servant should be arrested or not is not a function of the appointing authority, it is wholly extra-statutory. In case the appointing authority holds that a public servant is not to be arrested and declines approval, what would happen, as there is no provision for grant of anticipatory bail. It would tantamount to taking away functions of court. To decide whether an accused is entitled to bail under Section 438 in case no prima facie case is made out or under Section 439 is the function of the Court. The direction of the appointing authority not to arrest may create conflict with the provisions of the 1989 Act and is without statutory basis.

[88] (2005) 1 SCC 568 : 2005 SCC (Cri) 415

63. By the guidelines issued, the anomalous situation may crop up in several cases. In case the appointing authority forms a view that as there is no prima facie case the incumbent is not to be arrested, several complications may arise. For the arrest of an offender, may be a public servant, it is not the provision of the general law of CrPC that permission of the appointing authority is necessary. No such statutory protection is provided to a public servant in the matter of arrest under IPC and CrPC as such it would be discriminatory to impose such rider in the cases under the 1989 Act. Only in the case of discharge of official duties, some offence appears to have been committed, in that case, sanction to prosecute may be required and not otherwise. In case the act is outside the purview of the official discharge of duty, no such sanction is required.

64. The appointing authority cannot sit over an FIR in case of cognizable, non-bailable offence and investigation made by the police officer; this function cannot be conferred upon the appointing authority as it is not envisaged either in CrPC or the 1989 Act. Thus, this rider cannot be imposed in respect of the cases under the 1989 Act, may be that provisions of the Act are sometimes misused, exercise of power of approval of arrest by the appointing authority is wholly impermissible, impractical besides it encroaches upon the field reserved for the legislature and is repugnant to the provisions of general law as no such rider is envisaged under the general law.

65. Assuming it is permissible to obtain the permission of the appointing authority to arrest the accused, would be further worsening the position of the members of the Scheduled Castes and Scheduled Tribes. If they are not to be given special protection, they are not to be further put in a disadvantageous position. The implementation of the condition may discourage and desist them even to approach the police and would cast a shadow of doubt on all members of the Scheduled Castes and Scheduled Tribes which cannot be said to be constitutionally envisaged. Other castes can misuse the provisions of law; also, it cannot be said that misuse of law takes place by the provisions of the 1989 Act. In case the direction is permitted to prevail, days are not far

away when writ petition may have to be filed to direct the appointing authority to consider whether the accused can be arrested or not and as to the reasons recorded by the appointing authority to permit or deny the arrest. It is not the function of the appointing authority to intermeddle with a criminal investigation. If at the threshold, approval of the appointing authority is made necessary for arrest, the very purpose of the Act is likely to be frustrated. Various complications may arise. Investigation cannot be completed within the specified time, nor trial can be completed as envisaged. The 1989 Act delay would be adding to the further plight of the downtrodden class.

In re : Approval of arrest by the SSP in the case of a non-public servant

66. Inter alia for the reasons as mentioned earlier, we are of the considered opinion that requiring the approval of SSP before an arrest is not warranted in such a case as that would be discriminatory and against the protective discrimination envisaged under the Act. Apart from that, no such guidelines can prevail, which are legislative. When there is no provision for anticipatory bail, obviously arrest has to be made. Without doubting bona fides of any officer, it cannot be left at the sweet discretion of the incumbent howsoever high. The approval would mean that it can also be ordered that the person is not to be arrested then how the investigation can be completed when the arrest of an incumbent, is necessary, is not understandable. For an arrest of the accused such a condition of approval of SSP could not have been made a sine qua non, it may delay the matter in the cases under the 1989 Act.

In re : Requiring the Magistrate to scrutinise the reasons for permitting further detention

67. As per the guidelines issued by this Court, the public servant can be arrested after approval by the appointing authority and that of a non-public servant after the approval of SSP. The reasons so recorded have to be considered by the Magistrate for permitting further detention. In case of approval has not been granted, this exercise has not been undertaken. When the offence is registered under the 1989 Act, the law should take its course no additional fetters are

called for on arrest whether in case of a public servant or non-public servant. Even otherwise, as we have not approved the approval of arrest by appointing authority/SSP, the direction to record reasons and scrutiny by the Magistrate consequently stands nullified.

68. The direction has also been issued that the DSP should conduct a preliminary inquiry to find out whether the allegations make out a case under the Atrocities Act, and that the allegations are not frivolous or motivated. In case a cognizable offence is made out, the FIR has to be outrightly registered, and no preliminary inquiry has to be made as held in *Lalita Kumari*[5] by a Constitution Bench. There is no such provision in the Code of Criminal Procedure for preliminary inquiry or under the SC/ST Act, as such direction is impermissible. Moreover, it is ordered to be conducted by the person of the rank of DSP. The number of DSP as per stand of the Union of India required for such an exercise of preliminary inquiry is not available. The direction would mean that even if a complaint made out a cognizable offence, an FIR would not be registered until the preliminary inquiry is held. In case a preliminary inquiry concludes that allegations are false or motivated, FIR is not to be registered, in such a case how a final report has to be filed in the Court. Direction 79.4 cannot survive for the other reasons as it puts the members of the Scheduled Castes and Scheduled Tribes in a disadvantageous position in the matter of procedure vis-à-vis to the complaints lodged by members of upper caste, for later no such preliminary investigation is necessary, in that view of the matter it should not be necessary to hold preliminary inquiry for registering an offence under the Atrocities Act, 1989.

70. We do not doubt that directions encroach upon the field reserved for the legislature and against the concept of protective discrimination in favour of downtrodden classes under Article 15(4) of the Constitution and also impermissible within the parameters laid down by this Court for exercise of powers under Article 142 of the Constitution of India. Resultantly, we are of the considered opinion that Directions 79.3 and 79.4 issued by this Court deserve to be and are hereby recalled and consequently we hold that Direction 79.5, also vanishes. The review petitions are allowed to the extent mentioned above."

Paragraph 68 of this decision clearly held that the direction to hold a preliminary inquiry issued in ***Dr. Subhash Kashinath Mahajan***[82] was not consistent with the statutory framework while it was held in paragraph 70 that the directions issued by the two Judge Bench amounted to encroachment upon the field reserved for the legislature.

65. The submissions regarding the second prayer in the Writ Petition are required to be considered in the backdrop of these decisions.

66. In ***Jacob Mathew***[4], the guidelines were issued after noticing Section 88 of the IPC[3] falling in Chapter titled "General Exceptions" as well as illustrations below Sections 88, 92, and 93 of the IPC[3]. The direction, "a private complaint may not be entertained unless the complainant has produced *prima facie* evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness and negligence on the part of the accused doctor" was founded on reasons including the status of a medical professional acknowledged by Section 88 and illustrations as stated above as well as the fact that the investigating officers and the private complainant would not be supposed to be having knowledge about medical science so as to determine whether the act of the accused professional amounted to a rash and negligent act

within the domain of criminal law. It is true that the decision in ***P. Sirajuddin***[69] did observe that there ought to be a preliminary inquiry before a first information report is registered against a public servant of any status. But today, with the establishment of Vigilance Cells in every Governmental Department or organisation, the preliminary inquiries are not strictly traceable to the direction issued by this Court. As a matter of fact, the accepted norm – be it in the form of CBI Manual or like instruments is to insist on a preliminary inquiry. One can also say that the protection to a public servant is the underlying principle under certain provisions like Section 197 of the Code and as such there is some foundation in statutory provisions.

On the other hand, directions (19.1 to 19.11) issued in ***Rajesh Sharma***[73], were not found to be in accord with the statutory framework and as such did not meet with the approval of the decision of the larger bench of this Court. Similarly, the directions issued in ***Dr. Subhash Kashinath Mahajan***[82] regarding holding of a preliminary inquiry were not found consistent with the statutory framework. The second prayer made in the Writ Petition is asking for the constitution of the Committee completely outside the scope of the statutory framework. Similar such exercise of directing constitution of a Committee was found inconsistent with the

statutory framework in the decisions discussed above. We are conscious that the directions issued in ***Jacob Mathew***[4] had received approval by a Constitution Bench in ***Lalita Kumari***[5], but those guidelines issued in ***Jacob Mathew***[4] stand on parameter which are completely distinguishable from the subsequent decisions of three Judge Bench of this Court in ***Union of India vs. State of Maharashtra and Others***[70] and in ***Social Action Forum for manav Adhikar and Another vs. Union of India, Ministry of Law and Justice and Others***[71]. Any relief granted in terms of second prayer would certainly, in our view, amount to encroachment upon the field reserved for the legislature. We have, therefore, no hesitation in rejecting the prayer and dismissing the Writ Petition to that extent.

67. It must however be clarified that every Journalist will be entitled to protection in terms of ***Kedar Nath Singh***[2], as every prosecution under Sections 124A and 505 of the IPC[3] must be in strict conformity with the scope and ambit of said Sections as explained in, and completely in tune with the law laid down in ***Kedar Nath Singh***[2].

68. In conclusion:

i. We quash FIR No.0053 dated 6.5.2020, registered at Police Station Kumarsain, Distt. Shimla, Himachal Pradesh, against the petitioner;

ii. but reject the prayer that no FIR be registered against a person belonging to media with at least 10 years of standing unless cleared by the Committee as suggested.

69. Writ Petition is allowed to the aforesaid extent.

…….J.
[UDAY UMESH LALIT]

…….J.
[VINEET SARAN]

NEW DELHI;
JUNE 03, 2021.