

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 10241 of 2023**

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MOHAMMAD SHAUKATALI NAUSARKA  
Versus  
STATE OF GUJARAT

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Appearance:

MR NADIM B MANSURI FOR MR EJAZ M QURESHI(5401) for the  
Applicant(s) No. 1  
for the Respondent(s) No. 2,3,4,5,6,7  
MR K M ANTANI APP for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**

**Date : 09/10/2023**

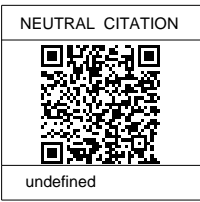
**ORAL ORDER**

1. This petition is filed under Article 226 of the Constitution of India read with provisions of Section 482 of the Code of Criminal Procedure with the following reliefs:

*“[A] Your Lordships may be pleased to issue appropriate writ order and/or direction and quash and set aside the impugned FIR being CR No.1-11822019221130 lodged by the respondent No.2 QUA petitioner.*

*[B] Your Lordships may be pleased to issue appropriate writ, order and/or direction directing the respondent Nos.6 and 7 to hold departmental inquiry against the respondent Nos. 3, 4 and 5 and other police personnel of LCB and take action against them pursuance of the representations made by the petitioner at Annexure-B, Annexure-C and statement of the petitioner before the learned Magistrate Annexure-G, complaining against the police personnel against torture while in custody.*

*[C] Your Lordships may be pleased to issue appropriate writ, order*



*and/or direction directing the respondent No.1 State of Gujarat to pay compensation of Rs.10 Lacs to the petitioner for illegal detention and torture by the police personnel and thereafter if the State deems fit, it may recover the same from the erring officers.*

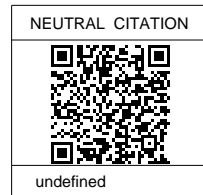
*[D] Pending admission, hearing and final disposal of this Petition, Your Lordships may be pleased to:*

*(1) Direct the learned IGP respondent No.6 and DGP respondent No.7 to place on record of this Hon'ble Court action taken report on the basis of the representations made by the petitioner dated 2/7/2022 and 4/7/2022 complaining about illegal detention and torture by the respondent Nos. 3, 4 and 5 and other police personnel of LCB, Navsari.*

*(ii) Direct the learned Magistrate, Navsari Chief Judicial to place on record of this Hon'ble Court action taken report on the basis of the statement of the petitioner dated 6/7/2022 (Annexure-G) complaining of illegal torture and beating by the police personnel in custody and medical examination report of petitioner, against the erring officers.*

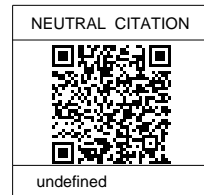
*[E] Grant such other and further relief, which this Hon'ble Court may may be deemed just and proper in favour of the petitioner, in the interest of justice."*

2. According to the case of the petitioner, he is a businessman and public spirited citizen and Secretary of SDPI (Social Democratic Party of India). The PSI, Navsari Police Station filed a complaint being CR No.11822019221130 of 2022 before the Navsari Town Police Station for the offence punishable under Sections 153-A, 505 and 120-B of the Indian Penal Code (for short the IPC) read with Section 66A(b) of the Information Technology Act, 2000. Pursuant to the said FIR, on 29/06/2022



between 11:00 and 12:00 in the morning, PSI called a meeting of religious leaders of Hindu and Muslim community in the background of the fact that in debate show one Ms.Nupur Sharma has sparked the tampo and as the festival of Rathyatra is approaching to maintain the peace and harmony in the society. Meanwhile, PSI received one message on WhatsApp social media platform stating that, *“The news has come that some Muslim shop in the lower Shantadevi Road Navsari has been demolished by unruly elements and those who have Muslim tenants in their shop have been threatened. After knowing the whole matter, we will take legal action.”* (translated in English). The complainant PSI verified about the message and found that this text message was circulated by the members of SDPI viz., (01) AbdulKadir Mehbub Saiyed (02) Aftab Salimminya Danti (03) Mohmmmed Sokatali Navsarka (04) Imran Habibkhan Pathan and (05) Mohsin Mehbub Saiyed who were called by the Police; necessary inquiry was made and they have admitted and accepted before the IO that without verifying the genuineness of the said message, this group has forwarded / circulated the message of WhatsApp group. Since the complainant found that such messages were circulated in the WhatsApp group is in regards to prompting enmity between two groups on ground of religious places and resident, etc., and this act being prejudicial to the maintenance of harmony, the PI has filed the complaint as afore-stated.

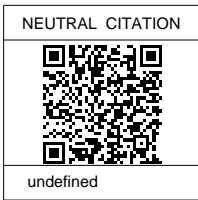
3. The present petitioner is one of the accused in the said offence. It is also the case of the petitioner that when he was arrested by the police pursuant to the aforesaid FIR, he had



been mercilessly beaten by the IO and other Police Officer and was given threat to life by the said officers. It is further the case of the petitioner that on 02/07/2022, he has made representation to the DGP, State of Gujarat complaining about illegal detention and beating of the petitioner. It is further stated that FIR is concocted, false and vexatious. On the above premises, the petitioner has filed the present petitioner seeking aforesaid relief.

4. Learned Advocate for the petitioner makes three fold submissions. Firstly, he would submit that offence under Section 66A(b) of the IT Act cannot be registered as the said provisions of law has been struck down by the Hon'ble Apex Court. He would further submit that alleged offence under Section 153-A and 505 of the IPC are the sequel of offence under the IT Act and therefore charge under Section 153-A and 505 of the IPC by itself is not maintainable and thus FIR may be quashed and set aside.

4.1 Another contention raised by learned Advocate for the petitioner that on perusal of the message which has been made basis for registration of the FIR, it does not construe that this message was passed / forwarded to trigger the enmity between the two different groups on ground of religion i.e. between Hindu and Muslim. In fact, by this message, it is stated that the group of particular religion shall take necessary legal action for beating one Muslim tenant. He would further submit that circulation of this message by no means makes out an offence under Section 153-A of the IPC or the offence of conducting the public mischief.



He would further submit that petitioner has not done any illegal activity in circulating this message and therefore no offence as alleged in the FIR is made out.

4.2 Learned Advocate for the petitioner further submitted that on 28/06/2022, the Navsari Town Police Station has detained the petitioner and other two other persons addressing them as terrorist, as also spoken filthy abusive language and then beaten mercilessly which was prima-facie proved from the MLC Case No.13692 dated 30/06/2022. He would further submit that since the concerned Police Station has not taken any action against the erring Officer, present petitioner has preferred representation to the IG Office for taking necessary action against the erring officer. He would further submit that since the DIG did not take any action the petitioner has preferred this petition to take necessary action against respondents no.3 to 5 and other police personnel of LCB, as also seeking compensation of Rs.10.00 Lakh for illegal detention and torture by the Police personnel. He would further submit that constitutional guarantee of right to life has been given to the petitioner as the petitioner is the citizen of India and right to life guaranteed by the Constitution has been snapped by erring Police Officer and therefore petitioner is entitled to compensation and also entitled to seek the relief of holding departmental inquiry against the erring Officer of the State. Upon above submissions, he would urge to allow this petition.

5. Learned APP on the other hand appearing for the respondent – State referring the judgment of ***Shreya Singhal vs.***

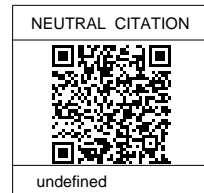


*Union of India [2015 (5) SCC 1]* would submit that the Hon'ble Apex court has struck down Section 66A of the IT Act considering it as violative of Article 19(1) related to the freedom of speech and expression and therefore no question would arise that Investigating Officer shall file the charge-sheet qua the said offence and he also assures this Court that IO shall take care of the aspect that it cannot be part of the alleged offence. He would further submit that bare reading of the WhatsApp message stated in the FIR and circulated in the social media and admitted by the petitioner as well as other accused clearly indicates that such message has been circulated in the society with the intention to disturb the public harmony and prompting enmity between two community. He would further submit that whether the petitioner was beaten or not can be taken care by the learned Court below while addressing the complaint made by the petitioner and therefore it may not be addressed in this petition. Upon such submissions, he would submit to dismiss the petition.

6. At the outset, let refer to Section 153-A & 505 of the IPC.

*“[153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—*

*(1) Whoever—(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will*



*between different religious, racial, language or regional groups or castes or communities, or*

*(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, 2[or] 2[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both. Offence committed in place of worship, etc.—(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]”*

*“505. Statements conducing to public mischief.—2[(1)] Whoever makes, publishes or circulates any statement, rumour or report,—*



*(a) with intent to cause, or which is likely to cause, any officer, soldier, 3[sailor or airman] in the Army, 4[Navy or Air Force] 5[of India] to mutiny or otherwise disregard or fail in his duty as such; or*

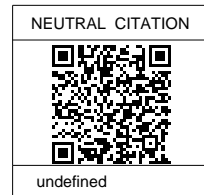
*(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or*

*(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to 6[three years], or with fine, or with both.7[(2) Statements creating or promoting enmity, hatred or ill-will between classes.—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.*

*(3) Offence under sub-section (2) committed in place of worship, etc.—Whoever commits an offence specified in sub-section (2) in any place of worship or in an assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]”*

7. A plain reading of Section 153-A of the IPC indicates that



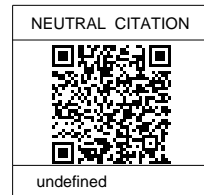


if any act which prompt enmity between the two groups on the ground of religion and hatred is made, at outset it exhibits that the offence is made out. The purpose of enactment of such a provision was to check fissiparous communal and separatist tendencies and secure fraternity so as to ensure the dignity of the individual and the unity of the nation. Undoubtedly, religious freedom may be accompanied by liberty of expression of religious opinions together with the liberty to reasonably criticise the religious beliefs of others, but as has been held by courts time and again, with powers come responsibility. (See ***Pravasi Bhalai Sangathan Vs. Union of India & Ors. AIR 2014 SC 1591***).

8. At this juncture, let refer to the observations made in case of ***Manzar Sayeed Khan & Anr vs State of Maharashtra & Anr. [2007 5 SCC 1]***.

*“Section 153A of LP.C., covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquility. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153A of LP.C. and the prosecution has to prove prima facie the existence of mens rea on the part of the accused.”*

9. On reading of the FIR, what prima facie contemplates that the message circulated through WhatsApp group with intention to prompt hatred or disharmony amongst two groups



and which may create sufficient mischief so as to fall within the scope of Section 153-A r/w 505 of the IPC. Whether the petitioner has intention to cause disharmony or hatred amongst two groups can be established during the trial. Intention can be gathered from the written words during the trial; but at this juncture particularly at the stage of seeking quashment of FIR, it cannot be said that no offence is made out. It is not the case of the petitioner that he has not circulated any message on WhatsApp group. Whether circulation of such message is with intention to prompt hatred or disharmony amongst two groups and whether such circulation creates mischief attracting offence under Section 153-A r/w 505 of the IPC can be evaluated during the trial. It cannot be tried at threshold.

10. At this juncture, let refer to ***M/s Neeharika Infrastructure Pvt. Ltd. Vs State of Maharashtra and others [Live Law 2021 SC 211]*** whereby guidelines given by the Hon'ble Apex Court in the operative part reads thus:

**“Conclusions:**

*8. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C.,*



*while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:*

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the rarest of rare cases (not to be confused with the formation in the context of death penalty).*
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- vi) Criminal proceedings ought not to be scuttled at the initial stage;*
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*
- viii) Ordinarily, the courts are barred from usurping*



*the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*

*ix) The functions of the judiciary and the police are complementary, not overlapping;*

*x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

*xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

*xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

*xiii) The power under Section 482 Cr.P.C. is very wide,*



*but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;*

*xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;*

*xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;*

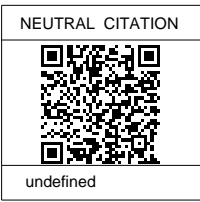
*xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High*



*Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.*

*xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.*

*xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood*



*and/or misapplied.”*

11. For the foregoing reasons, the petitioner fails to make out the prima facie case to intervene with the quashing of FIR. Needless to say that in view of judgment delivered by the Hon'ble Apex Court in *Shreya Singhal (supra)*, whereby the offence under Section 66 of the IT Act is struck down, no investigation in this regard can be carried out by the IO and the IO is strictly prohibited from carrying out the investigation qua the offence under Section 66A of the IT Act as also the learned APP assures to this Court.

12. Now, insofar as the submissions of petitioner of beating mercilessly, it appears that he has made complaint before the learned JMFC which will take care by the concerned Officer and therefore at this juncture, such submission is not maintainable in the present petition.

13. With the aforesaid observations and directions, petition stands dismissed.

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**(J. C. DOSHI,J)**