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THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-9035-2021
Date of Decision: 17.02.2022.

Yuvraj Singh .....Petitioner

Versus

State of Haryana and another ….Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Puneet Bali, Senior Advocate, with
Mr. Uday Agnihotri, Advocate and
Mr. Sachin Jain, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Arjun Sheoran, Advocate,
for respondent no.2.

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Amol Rattan Singh, J. (Oral)

Vide this petition, the petitioner seeks to invoke the jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973, to quash FIR no.0115, dated 14.02.2021, registered at Police Station Hansi, District Hansi, wherein it is alleged that offences punishable under Sections 153-A and 153-B of the IPC, as also Section 3 (1)(u) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989 (hereinafter referred to as the Act), have been committed. [Subsequently, as submitted before this court, an offence punishable under Section 3(1)(s) of the Act has also been added in the FIR.]

The grounds spelt out in the petition for quashing the FIR, can

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be essentially summed up as follows:-

(i) That respondent no.2 (complainant) 'does not have clean hands' and has misinterpreted the issue to be one as an act in violation of the provisions of the Act;

(ii) That respondent no.2 has no *locus standi* to register the FIR as the word in question (*bhangi*) as was used by the petitioner, was neither directed at him nor at any other member of the *dalit* community; and therefore the motive of the said respondent, in getting the FIR registered, was only to blackmail the petitioner and to extract money from him;

(iii) That none of the ingredients of either Sections 153-A and 153-B of the IPC, or of Section 3(1)(u) of the Act, would be made out, with no specific allegation (in reference to them), having been levelled against the petitioner, because in the entire FIR there is no averment of the petitioner promoting enmity between any different groups on grounds of religion, race, place of birth, residence etc., or of doing any act prejudicial to maintenance of harmony, or being prejudicial to national integration etc.;

(iv) That the FIR thus deserves to be quashed on the aforesaid grounds, as also in terms of the ratio of various judgments of the Supreme Court, cited as follows:-

a. Subhash Kashinath Mahajan vs. State of Maharashtra, (2018) 6 SCC 454;
b. Jones vs. State, 2004 Crl.LJ 2755;
c. Inder Mohan Goswami and another vs. State of Uttranchal and others, (2007) 12 SCC 1;
d. State of Karnataka vs. L.Muni Swami and others, AIR

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1977 SC 1489;
e. Som Mittal vs. Govt. of Karnataka, (2008) 2 SCC (Crl.) 1;
f. State of Haryana vs. Ch. Bhajan Lal, 1991 (1) RCR (Crl.) 383;

2. When the petition first came up for hearing, the contentions initially raised by counsel for the parties on the date, (with notice of motion issued and with an interim order thereafter passed by this court at that stage), are also considered appropriate to be reproduced at this initial stage itself, in this judgement. Thus, the relevant part of the order dated 25.02.2021, is reproduced as regards the arguments raised on that date by learned senior counsel appearing for the petitioner, and learned counsel for the complainant (respondent no.2):-

> "Mr. Bali, learned senior counsel appearing for the petitioner, submits that, firstly, the person in reference to whom the allegedly casteist remarks are stated to have been made (though denied), does not belong to a Scheduled Caste and hence, they could not be said to be casteist remarks.
>
> He next submits that the remarks were made in the context of the person concerned (Yuzvendra Chahal) "having made" his father dance at a marriage ceremony (as contended), and therefore the remarks were in the context of somebody being in an inebriated condition, with him thereafter submitting that bhang is also an intoxicant and the word 'bhangi' had been used by the petitioner in that context.
>
> He points to paragraph 5 of the petition, in which it is stated that term used, 'bhangi', was not intended to hurt the sentiments of any community or any person, but was a friendly comment made by the petitioner to his friends and colleagues who are not part of the "respected dalit community".
>
> Mr. Bali next points to the provision in respect of which the petitioner is stated to have committed an offence, i.e. Section 3 (1) (u) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, which reads as follows:-

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> "3. Punishments for offences of atrocities.—
> (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—
> xxx xxx xxx
> (u) by word either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;
> shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

Mr. Bali submits that even the context of the word used in the "Instagram chat" by the petitioner with his friend, would not impute any kind of ill-will, enmity or hatred, or any attempt to promote such feelings, it having been used in the context of one persons' father dancing in a marriage ceremony, with that person not belonging to any scheduled caste.

Mr. Bali also submits that the complainant in the FIR in question, is a person who has made many complaints against many celebrities and important people etc. and that he would be filing the details of such complaints in due course, he having received that information only today.

Learned senior counsel also refers to paragraph 6 of the petition, wherein it has been stated that a person called Rajat had approached the petitioner through the petitioners' manager, in the month of June, 2020, to find 'means to close the issue', in which context he points to Annexure P4, which is stated to be a photograph of the said person, whom learned senior counsel submits, as per the instructions of the petitioner, is a person known to the complainant.

Notice of motion, with Mr. Surender Singh, learned AAG, Haryana, accepting notice on behalf of the respondent State at the asking of the court and with Mr. Arjun Sheoran, Advocate, appearing for the complainant and also accepting notice on his behalf, copies of the petition already having been received by both the counsel.

Learned State counsel submits that as per his instructions, the matter is still under investigation

Mr. Sheoran, learned counsel for the complainant, submits that, firstly, as regards the person referred to as Rajat in

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paragraph 6 of the petition, the complainant makes a categorical statement that he does not know him and so the question of that person ringing up the petitioner to demand money on behalf of the complainant, would not arise in the first place.

He next submits that admittedly the word "bhangi" having been used, it refers to a caste listed in the Scheduled Castes notified by the Government of Haryana and further, therefore the phrase used being "ye bhangi log ko koi kaam nahi hain", it would be encompassing the whole community, and therefore it cannot be said that there is no violation of the aforesaid provision of the Act of 1989.

He also relies upon a judgment of the Supreme Court in **Amish <u>Devgan v. Union of India (</u>**2021) 1 SCC 1, from which he refers to paragraph 76, which reads as follows:-

> "52. Persons of influence, keeping in view their reach, impact and authority they yield on general public or the specific class to which they belong, owe a duty and have to be more responsible. They are expected to know and perceive the meaning conveyed by the words spoken or written, including the possible meaning that is likely to be conveyed. With experience and knowledge, they are expected to have a higher level of communication skills. It is reasonable to hold that they would be careful in using the words that convey their intent. The reasonable-mans test would always take into consideration the maker. In other words, the expression reasonable man would take into account the impact a particular person would have and accordingly apply the standard, just like we substitute the reasonable mans test to that of the reasonable professional when we apply the test of professional negligence. 98 This is not to say that persons of influence like journalists do not enjoy the same freedom of speech and expression as other citizens, as this would be grossly incorrect understanding of what has been stated above. This is not to dilute satisfaction of the three elements, albeit to accept importance of who when we examine harm or impact element and in a given case even intent and/or content element."

Learned counsel further submits that the judgment relied upon in the petition, in the case of **<u>Subhash Kashinath Mahajan v. State of Maharashtra</u>** (2018) 6 SCC 454, has been 'reviewed' by the Supreme Court in the judgment in **<u>Union of India v. State of Maharashtra</u>** (2020) 4 SCC 761 and consequently is no longer good law. He refers to paragraphs 52 and 54 of the latter judgment, which read as follows:-

> "52. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law

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as a class and it is not resorted to by the members of the upper Castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false/unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care in proceeding under section 482 of the Cr.PC.

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54. As a matter of fact, members of the Scheduled Castes and Scheduled Tribes have suffered for long, hence, if we cannot provide them protective discrimination beneficial to them, we cannot place them at all at a disadvantageous position that may be causing injury to them by widening inequality and against the very spirit of our Constitution. It would be against the basic human dignity to treat all of them as a liar or as a crook person and cannot look at every complaint by such complainant with a doubt. Eyewitnesses do not come up to speak in their favour. They hardly muster the courage to speak against upper caste, that is why provisions have been made by way of amendment for the protection of witnesses and rehabilitation of victims. All humans are equal including in their frailings. To treat SCs. and STs. as persons who are prone to lodge false reports under the provisions of the Scheduled Castes and Scheduled Tribes Act for taking revenge or otherwise as monetary benefits made available to them in the case of their being subjected to such offence, would be against fundamental human equality. It cannot be presumed that a person of such class would inflict injury upon himself and would lodge a false report only to secure monetary benefits or to take revenge. If presumed so, it would mean adding insult to injury, merely by the fact that person may misuse provisions cannot be a ground to treat class with doubt. It is due to human failings, not due to the caste factor. The monetary benefits are provided in the cases of an acid attack, sexual harassment of SC/ST women, rape, murder, etc. In such cases, FIR is required to be registered promptly."

Thus, the contention raised is that simply because the complainant is a social activist, he is not precluded from raising an issue which affects the society at large and with the petitioner being a celebrity who has crores of followers on the instagram app (as contended), the chat in question would have been followed by all such 'followers', as also by the followers of his other celebrity friends with whom he was in conversation.

Last, Mr. Sheoran submits today that the video

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clipping and the utterances therein having been admitted by the petitioner, the present petition does not deserve to be entertained as it is still to be investigated, and consequently should be dismissed; and this not being a petition seeking "anticipatory bail" for the petitioner, no order in that regard should be passed by this court.

In part rebuttal to the aforesaid argument, as regards the judgment cited by counsel for respondent no.2, Mr. Bali cites a judgment of the Supreme Court in the case of **Hitesh Verma v. The State of Uttarakhand and another** (Criminal Appeal no.3585 of 2020, decided on 05.11.2020), to submit that the judgment of the Constitution Bench in Union of India v. State of Maharashtra was duly considered in Hitesh Vermas' case and it was held that in an appropriate case, even qua an FIR registered under the provisions of the Act of 1989, a Constitutional Court would not be precluded from invoking jurisdiction under the provisions of Section 482 of the Cr.P.C., to quash such FIR.

However, to that contention, learned counsel for respondent no.2 submits that the said judgment is not at all relevant to the present case because it was wholly in a different context as was the judgment referred to in Hitesh Vermas' case, i.e. **Ishwar Pratap Singh & Others v. State of Uttar Pradesh and another,** (2018) 3 SCC 612."

3. Upon hearing the aforesaid arguments on that date, the following observations were made by this court, in that very order:-

Having considered the matter at this stage with investigation still underway, this court would not exercise jurisdiction to stop investigation, but in view of the fact that at least prima facie at this stage, the term in question being subject to two interpretations, i.e. as to whether it was used against any particular community (or in the context of any community) or was in reference to a person who was in an inebriated condition, with the person concerned (Yuzvendra Chahal) admittedly not belonging to any scheduled caste even as per learned counsel for the complainant, no coercive action shall be taken against the

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petitioner, subject of course to the reply to be filed by the respondents herein.

It is of course to be observed by this court that the Act of 1989 is a legislation enacted to safeguard the interests of a section of society that has been known to be oppressed since ages. Naturally any violation of the provisions of the said Act have to be dealt with strictly to try and ensure that a sense of well being is instilled in such sections of society, towards which every person, and 'celebrities' in particular, should be careful in the usage of any term which can be misinterpreted; yet, as already said hereinabove, since the specific contention of the learned senior counsel appearing for the petitioner is that the term sued *(sic)* by the petitioner was wholly in the context of persons in an inebriated condition, the interim direction hereinabove has been made, subject to the outcome of the investigation and the reply to be filed accordingly by a gazetted officer in that regard.

Since learned State submits that he may be given four weeks time to file a reply as regards the investigation carried out, adjourned to 26.03.2021."

4. Coming then to the contentions raised in the petition, it is stated by the petitioner at the outset that he is a victim of gross persecution and harassment at the hands of respondent no.2, who has initiated malicious prosecution by abusing the process of law.

The petitioner further goes on to state that in April 2020, he and his colleague, Rohit Sharma, had a live chat, on a social media platform, namely Instagram, "to *inter alia* discuss as to how lives have become amidst the pandemic and the then prevailing lock-down."

It is next stated in the petition that from June, 2020, onwards, the video recording was circulated on various social media platform with a malicious attempt to "malign and harm the reputation of the petition", with

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false allegations levelled against him to the effect that he had violated the provisions of the Act by disrespecting the "respected *dalit* community."

It is next stated that the petitioner while in such conversation with Rohit Sharma, referred to two other persons (Yuzvendra Chahal and Kuldeep Yadav), by referring to them as "*Bhangi* (in a friendly manner)" with the said two persons being colleagues and friends of the petitioner, with therefore there being no intent to disrespect them or any community during the conversation.

5. Subsequently, on June 05, 2020, the petitioner is also stated to have released a public statement apologizing for the aforesaid remarks and clarifying that "he does not disparage anyone on the basis of colour, caste, creed or gender and that he truly believes in the dignity of life and has respect for each individual without exception".

Thus a press release to that effect is stated to have been made by the petitioner, a copy of that statement having been annexed as Annexure P-1 with the petition, (shown to be a tweet on the social media platform "Twitter").

6. In August, 2020, the petitioner is stated to have been informed by the police of Police Station DLF, Phase -V, Sector 43, Gurugram, that a complaint had been filed against him on the basis of allegations of violations of the provision of the Act, though a copy of the complaint is not stated to have been provided to him.

On 17.08.2020, the petitioner is stated to have made a response to the said complaint, after which, 'as per the petitioners' belief', the police at Gurugram was satisfied with the response and consequently closed the case.

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7. On 15.02.2021, the petitioner is stated to have found out through a newspaper article that the FIR presently in question had been registered at Police Station Hansi, on 14.02.2021.

8. It is next stated in the petition that a person by the name of Rajat had approached the manager of the petitioner in June 2020 itself, to find a means to “close the issue as per his requirements and demands”.

The petitioner however never paid any heed to the aforesaid offer.

It is then contended that respondent no.2 has resorted to therefore cause harm to the reputation and goodwill of the petitioner for ulterior motives and by unlawful means, with the said respondent being an Advocate.

9. A reply to the petition was initially filed on behalf of the respondent State by the Deputy Superintendent of Police, Hansi, dated 15.03.2021, in which it is stated that as per the complaint of respondent no.2, the said respondent belongs to the Scheduled Caste community with the petitioner belonging to the Jat Sikh community; and he by way of a live chat on social medial had hurt the sentiments of the *bhangi* community, which is a scheduled caste community and therefore he had tried to create hatred amongst the two communities and to cause disharmony amongst them and consequently, with the aforesaid complaint made to the Superintendent of Police, Hansi, as also to the DGP, Haryana, an inquiry was marked to the DSP.

The compact disc (CD) in question (in which the video conversation was recorded), was initially sent to the Cyber Police Station,

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Panchkula and then to the Central Forensic Science Laboratory (CFSL), Chandigarh, to determine its authenticity (on on 13.08.2020); and with the objections initially raised by that laboratory having been removed, it was again sent to the CFSL, after which the report of the CFSL, dated 28.09.2020, was to the effect that it was not the original video recording and hence no opinion could be formed regarding its authenticity.

10. Thereafter, the opinion of the Deputy District Attorney, Hansi, was sought, who initially raised an issue of jurisdiction on the ground that the address of the petitioner is of Manimajra, Chandigarh. Therefore, the complaint was sent to the Chandigarh Police, which was returned on 10.02.2021, stating that the offence having been committed at Model Town, Hansi, it would be the Hansi Police as would have jurisdiction to register and investigate the case; and consequently upon approval of the SP, Hansi, the FIR in question was registered (on 14.02.2021),

11. The SP then constituted a Special Investigation Team (SIT) on 15.02.2021, "in terms of Rule 7 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities), Rules, 1995" (as stated in the SPs' affidavit), with the said team headed by a DSP.

It has then been stated in the replyof the DSP that the investigation being at its initial stage, with the offences committed by the petitioner being cognizable in nature and non-bailable, the petitioner had committed an offence against the State and he had also not joined investigation of the case till that date (15.03.2021), and therefore quashing the FIR at its initial stage would cause grave prejudice to the investigating agency.

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12. The aforesaid being the preliminary submissions made by the State, the reply on merits essentially reiterates the above.

13. The matter thereafter having come up for hearing on 26.03.2021 before this court, other than some arguments raised on both sides (not of much significance at that stage), it had been observed by this court that the report of the CFSL, Chandigarh, was not understandable, in as much as the doubt on the authenticity of the compact disc would seem to be misplaced because the petitioner in any case was not denying having had the live chat in question, as was recorded in that disc.

Consequently, the SP, Hansi, had been directed to file his own affidavit, upon which an affidavit dated 23.04.02021 was filed by the SP, in which essentially what had been already stated by the DSP was reiterated, after which the contentions raised on behalf of the petitioner (as recorded in the order of this court dated 23.02.2021), have been referred to, to state that the petitioner was referring to the term '*bhangi*' as a person in an inebriated condition only to "save his skin from the clutches of law".

14. The SP next states in that affidavit that a local survey was conducted by the investigating agency to find out the actual meaning of the term '*Bhangi*' as used in common parlance by people of reasonable prudence.

As per the SP, from such survey it was found that the said term was used to denote a scheduled caste of the *Balmiki Chura/Chure* communities and that in common parlance it is used as an abuse or in a derogatory sense, by people belonging to not just the upper caste but even by people of other backward classes, and that in common parlance it has not been found that a person who consumes *bhang* (hemp), is called a *bhangi,*

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with a person who consumes *bhang* usually referred to as *nashedi* .

Consequently, the investigating officer had at that stage added an offence punishable under Section 3(1)(s) of the Act, as one of the offences committed.

It has next been stated by the SP that the petitioner having joined investigation, he could not produce any document to support that the word '*bhangi'* was used to refer to a person in an 'inebriated state'.

15. The SP next goes on to state that it is the context of the usage of the word that is to be seen and not just the word itself and therefore the phrase *'ye bhangi logon ko koi kam nahi hai'*, shows that the petitioner had used the word to encompass a whole community in an insulting and humiliating way, on a social media platform, which, as per the SP, is a public place within public view, for the purpose of interpretation of Section 3(1)(s) of the Act.

16. Next, the SP has stated in her affidavit dated 23.04.2021, that the *bhangi* community has been listed as a scheduled caste community in the official gazettes issued by the Governments of Punjab, Haryana, Delhi and Himachal Pradesh etc. and that the petitioner being a resident of Chandigarh, would be very well aware of the said fact, that the term is always used in an abusive and a derogatory sense and consequently the interpretation being given by him is not in the context of a person who consumes *bhang* .

Hence, it is stated that the term was used in a derogatory sense, which resulted in humiliation of those belonging to the said caste and consequently, the petitioner is liable to be prosecuted, with enough evidence having been gathered during the investigation, that he had committed the

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offences in question.

17. Upon the aforesaid affidavit of the SP having been filed, learned State counsel had submitted before this court on 28.04.2021, that in terms of the judgment of the Supreme Court in **M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others,** AIR 2021 SC 1918, the interim order passed by this court on 25.02.2021, directing that investigation may continue but no coercive steps be taken against the petitioner, would not be an order that would be sustainable any longer on the touchstone of the ratio of the said judgment, which was pronounced on 13.03.2021 by the Supreme Court.

However, upon query by this court he had sought time to take instructions as to whether petitioners' custodial interrogation was required or not.

18. Learned counsel for the petitioner had on the other hand relied upon a judgment of the Supreme Court in **Ajay Mitra vs. State of MP and others**, 2003 (1) RCR (Crl.) 674, submitting that the said judgment was to the contrary.

On 06.09.2021, learned State counsel had submitted that the petitioner had given a mobile phone to the DSP, with this court therefore having directed the DSP to file a short affidavit as to whether the phone actually contained the video clip containing the allegedly derogatory remarks.

19. Thereafter, on 15.09.02021, with learned senior counsel appearing for the petitioner having wished to address arguments in detail and counsel for the State having cited yet another judgment of the Supreme Court

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in **Salimbhai Hamidbhai Menon vs. Niteshkumar Mangalbhai Patel and another** 2021 SCC Online (SC) 647, this court had directed the SP to file an affidavit as to whether any coercive steps were required to be taken against the petitioner for any reasons, with the interim order directing that no coercive steps be taken against him however continued at that stage.

20. On 06.10.2021, other than recording some arguments raised by senior counsel for the petitioner, this court had directed that in terms of the judgment of the Supreme Court in Niharikas' case, the interim order passed on 28.02.2021 stood modified to the effect that upon the petitioner joining investigation with the investigating officer, he would be released on interim bail upon him furnishing adequate bail and surety bonds till the next date of hearing at that stage, with it also noticed that as per the affidavit filed by the SP, dated 30.09.2021, it has been stated that the petitioners' physical presence was required for effecting his 'formal arrest' in terms of Section 18-A (b) of the Act.

Consequently, it had been observed by this court that since only the formal arrest of the petitioner was required, he would be released on bail upon joining investigation, but that if the SP had anything further to say on the issue of the "formal arrest", she would file another affidavit clarifying the said term.

21. On 18.11.2021, learned State counsel had stated before this court that, as per his instructions from the DSP, Hansi, the petitioner having joined investigation, his custodial interrogation was not required.

22. Coming then to the reply filed by the complainant in the FIR, i.e. respondent no.2, Rajat Kalsan, it is stated in the preliminary submissions that

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the complaint was filed by him upon him having seen the video clip in question, with that clip also having been seen by a very large number of persons on the 'Instagram Live Chat', as the petitioner has about 20 million followers on the said social media platform.

Thus, it is contended that the word *bhangi*, as used by the petitioner, is a pejorative, which is in violation of the provisions of the Act.

In that context he has referred to a judgment of the Supreme Court in **Manju Devi vs. Onkarjit Singh Ahluwalia**, (2017) 13 SCC 439, reproducing paragraph 14 thereof, which reads as follows:-

> "14. In the above context, it is now easy to understand the factual matrix of the case. The use of the word `Harijan' `Dhobi' etc. is often used by people belonging to the so-called upper castes as a word of insult, abuse and derision. Calling a person by these names is nowadays an abusive language and is offensive. It is basically used nowadays not to denote a caste but to intentionally insult and humiliate someone. We, as a citizen of this country, should always keep one thing in our mind and heart that no people or community should be today insulted or looked down upon, and nobody's feelings should be hurt.".

He next quotes from another judgment of the Supreme Court in **Amish Devgan vs. Union of India,** (2021) 1 SCC 1, wherein it was observed that persons of influence, in view of the reach and impact that they have on the general public, are expected to know and perceive the meaning conveyed by the words spoken or written by them.

Hence, respondent no.2/complainant has stated that the petitioner being a famous cricketer, loved by millions, having used the said word "*bhangi*", has insulted whole *dalit* community.

23. In the reply on merits, other than repeating the aforesaid essential contentions, the complainant/respondent no.2 has referred to the

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Constitution (Scheduled Caste) Orders (Amendment) Bill, 2016, to contend that the said word, alongwith other words describing particular castes, was sought to be replaced as they are used in a derogatory/abusive manner.

The complainant next states that even in (the latter part of) his statement of apology, the petitioner simply stated as follows:

> "I understand that while I was having a conversation with my friends, I was misunderstood, which was unwarranted. However, as a responsible Indian I want to say that if I have unintentionally hurt anybody's sentiments or feelings, I would like to express regret for the same."

Hence, it is contended that even from the said statement it is obvious that the petitioner is not admitting that he had used the word as a pejorative and thus insulted the whole *dalit* community.

24. As regards the allegation of the petitioner that one Rajat contacted the manager of the petitioner to "close the issue", the complainant states that the photograph annexed with the chat of the person allegedly referred to as Rajat, is not of any relation/acquaintance of complainant/respondent no.2 and therefore the allegation is wholly misplaced, with the complainant being an Advocate and a social activist who is fighting against injustices against the *dalit* community and that it would be wrong to presume that if any member of the *dalit* community fights back against an insult on that community, the only motive for that would be to gain some monetary benefits.

In that context respondent no.2 refers to the judgment of the Supreme Court in **Union of India vs. State of Maharashtra**, 2020 (4) SCC 761, wherein it was observed that there can be no presumption that any member of the scheduled caste and scheduled tribe may misuse the

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provisions of law “as a class” (as already reproduced earlier in para 2 hereinabove).

25. Respondent no.2 next refers to the Constitution (Scheduled Castes) Order, 1950, to contend that the word *bhangi* refers to a scheduled caste notified by various states in the country.

26. All in all, those are the contentions raised by the respondent in his reply, with him of course having refuted the applicability of the judgments cited by learned counsel for the petitioner in his petition, in the context of the present case.

27. Coming then to the argument addressed by learned counsel appearing of the parties.

Learned senior counsel appearing for the petitioner, other than reiterating what has already been reproduced from the order of this court dated 25.02.2021, (reference para 2 of this judgment), first referred to Section 2 (ec) of the Act, which defines the word 'victim' as follows:-

> “(ec) “victim” means any individual who falls within the definition of the “Scheduled Castes and Scheduled Tribes” under clause (c) of sub-section (1) of Section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs.”

His contention therefore is that the complainant neither having suffered any physical, mental, psychological, emotional or monetary harm himself, nor being a relative, legal guardian etc. of any victim, the FIR is not maintainable on that ground alone.

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Learned senior counsel further submitted that though the complainant-respondent no.2 claims to be a social activist in the cause of members of the Scheduled Castes and Scheduled Tribes, however a perusal of the screen-shot of 'Whatsapp' messages and the table of complaints made by him (Annexures P-4 and P-8 with the petition, respectively), would show that he is a habitual complainant engaged in filing false and fictitious complaints against prominent people for publicity and is also an extortionist.

He further contended that in fact the complaint made at Gurugram on 05.08.2020 (referred to earlier, supra), was through another aid of his only to harass and extort money from the petitioner, with the police at Gurugram having filed away that complaint, to the best knowledge of the petitioner.

Learned senior counsel next referred to an order of this court (co-ordinate Bench) dated 12.10.2021, passed in CRM-M-42685 of 2021 (**Bhagwant Singh Randhawa and another v. State of Punjab**), issuing a direction to all Senior Superintendents of Police, that before registering any FIR under the Act, a legal opinion should be taken from the District Attorney as to whether the complainant falls within the definition of “victim” or not, with in fact that direction having been given in the context of “so-called social activists”.

28. Learned senior counsel next reiterated that there is no jurisdiction with the District Police, Hansi, to register the FIR as the petitioner was in Mumbai at the time that the words in question were said by him on social media and the person to whom they were being spoken, i.e. Rohit Sharma, was also not in Hansi at that time and in fact the person about

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whom they were spoken (Yuzvender Chahal) wasalso not in Hansi.

29. Mr. Bali, learned senior counsel time and again reiterated and emphasized that the word *bhangi* was used by the petitioner in the context of an inebriated person who consumes *bhang* (hemp) and not in the context of any caste or community and consequently, the question of any offence having been committed under the provisions of the Act, does not arise in the first place and the entire FIR is misconceived.

He further submitted in that context that since the word was used in the context of Yuzvender Chahal who does not belong to a scheduled caste, and was making his father dance at a wedding ceremony, it is very obvious that the word was used in that context only (of an intoxicated person).

He next referred to the meaning of the word *bhangi* as is stated to be used in the Merriam Webster dictionary as also the Collins English Dictionary, wherein the word (though a Hindi word), has been translated in various forms including in the context of a person using *bhang* (hemp), alongwith its translation in the latter dictionary as a reference to a member of a caste of persons traditionally assigned the work of sweeping.

Mr. Bali also submitted that a search on the internet, of the said word, also gives the aforesaid two meanings.

Thus, the contention of learned senior counsel is that looking at the context in which the word was used, at a marriage ceremony of persons not belonging to the scheduled castes, it can only have been used in the context of a person who was in an intoxicated state.

Learned senior counsel for the petitioner next submitted that

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further, the aforesaid act of the petitioner, in using the said word/phrase does not fall within the purview of Sections 153-A and 153-B of the IPC in any case.

He also submitted that during the course of oral arguments, learned counsel for respondent no.2 had in fact conceded before this court that he was not pressing the offence punishable under the aforesaid provisions of the IPC and with in any case, no *mens rea* attributable to the petitioner in the context of those provisions, the FIR is completely unsustainable even in that context.

Mr. Bali, in that context, relied upon a judgment of the Supreme Court in **Balwant Singh v. State of Punjab** (1995) 3 SCC 214, wherein it was held as follows:-

> "In so far as the offence under Section 153-A of the IPC is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, language or regional groups or castes or communities. In our opinion only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or effect public tranquility, that the law needs to step in to prevent such an activity. The facts and circumstances of this case unmistakably show that there was no disturbance or semblance of disturbance of law and order or of public order or peace and tranquility in the area from where the appellants were apprehended while raising slogans on account of the activities of the appellants. The intention to cause disorder or incite people to violence is the since qua non of the offence under Section 153 A

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> IPC and the prosecution has to prove the existence of *mens rea* in order to succeed. In this case, the prosecution has not been able to establish any *mens rea* on the part of the appellants, as envisaged by the provisions of Section 153 A IPC, by their raising casually the three slogans a couple of times. The offence under Sectio9n 153A IPC is, therefore, not made out."

Learned senior counsel submitted that the said opinion of the Supreme Court having been made in the context of a person who was raising slogans amounting to secessionism, the offence under Section 153-A in any case cannot apply to the utterance of the petitioner.

In the same context, he also referred to another judgment of the Supreme Court, in **Manzar Sayeed Khan v. State of Maharashtra and another** (2007) 5 SCC 1, wherein it was held as follows:-

> "Section 153A of the IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquility. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153A of the IPC and the prosecution has to prove prima facie the existence of *mens rea* on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section 153A must be read as a whole. One cannot rely on strongly worded and

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> 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."

Learned senior counsel submitted that therefore the offence punishable under Section 153-B of the IPC would also not be made out at all.

30. Coming then to the offences punishable under the Act, as the petitioner is alleged to have committed, i.e. under Section 3(1)(u) thereof, as also clause (s) of the said provision, learned senior counsel submitted that since the petitioner had not uttered the words with any intention of promoting feelings of any enmity, hatred or ill-will against any member of the scheduled castes or scheduled tribes, Section 3(1)(u) would not be attracted at all; and as regards the contention of respondent no.2 that the act being a beneficial piece of legislation *mens rea* is not required for the applicability of the said offence, as per learned senior counsel, merely because a legislation is for the welfare of any class of people, or even to eradicate social evils, *mens rea* cannot be deemed to have been 'waived off'.

Hence, he submitted that if there is no intention to cause any kind of hurt to any person by the utterance of any such words, that no offence at all would be made out.

In that context, he relied upon a judgment of the Supreme Court in **State of Maharashtra v. Mayer Hans George** AIR 1965 722, from which he pointed to the following part of the judgment:-

> "To put it differently, there is a presumption that *mens rea* is an essential ingredient of a statutory offence; but this may be rebutted by the express words of a statute creating the offence or by necessary implication. But the mere fact that the object of a

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> statute is to promote welfare activities or to eradicate grave social evils is in itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of the offence."

31. Learned senior counsel next submitted that with the language used in Section 3(1)(u) of the Act being almost identical to the language of Section 153-A of the IPC, inasmuch as both refer to an intention of promoting or attempting to promote feelings of ill-will etc. on grounds of religion, caste etc., the ratio of the judgments in *Balwant Singh* and *Manzar Sayeed Khans'* cases (both supra) would apply even to the provisions of the Act.

32. Mr. Bali next submitted that the words used by the petitioner not having resulted in any consequential action against any member of the Scheduled Castes and Scheduled Tribes, with no disturbances in law and order or peace and tranquility having been reported in that context, the provisions of the Act would in any case not apply, with the intention not being to use the phrase in any derogatory manner against any person of a particular caste or tribe.

33. Learned senior counsel next referred to an order/judgment of the Supreme Court in **R.S. Bharathi v. State** (2021) SCC Online SC 535, to submit that even a charge sheet filed against a political leader, alleging therein the commission of an offence punishable under Section 3(1)(u) of the Act, was quashed on the ground that the said provision was not attracted as the speech made by the said leader did not promote or attempt to promote feelings of enmity, hatred or ill-will against members of a Scheduled Caste or

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Scheduled Tribe.

34. Referring to the judgment of the Supreme Court in *Union of India v. State of Maharashtra* (supra), as has been relied upon by respondent no.2, learned senior counsel for the petitioner submitted that even in the said judgment itself, it has been held that where certain cases may have been falsely instituted, even in the context of the Act, such situations can be taken care of in proceedings under Section 482 of the Cr.P.C. and therefore the present petition is very much maintainable, contrary to what counsel for respondent no.2 submitted before this court on the date that notice of motion itself was issued.

In that regard, he pointed to the following part of the said judgment:-

> "52. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class and it is not resorted to by the members of the upper Castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false/unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care in proceeding under Section 482 of the Cr.P.C.

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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** (2005) 1 SCC 568."

35. Next, Mr. Bali submitted that the petitioner being a responsible citizen, who realises that unfortunately his statement was misunderstood, he immediately released a public statement apologizing to the entire country and conveying his true intention.

He further submitted that the petitioner had spent his entire life for the welfare of the people, with him also having done tremendous charitable work, including setting up of 800 ICU beds in different parts of the country over the past few months, including in Haryana, with him also having sponsored the cancer treatment of 85 underprivileged children in the past two years, with him also having sponsored cancer screening of more than 1.5 lakh people over the past 4 years.

Finally, learned senior counsel submitted that the petitioner having learnt from the unfortunate incident, he undertakes to further the cause of the "respectable Scheduled Castes and Scheduled Tribes Community" in any manner that this court may direct and consequently, with the Supreme Court also having held that in appropriate cases this court would exercise jurisdiction under Section 482 of the Cr.P.C. to quash any false FIR registered, the FIR in question deserves to be quashed.

36. In reply to the aforesaid contentions raised by learned senior counsel for the petitioner, Mr. Arjun Sheoran, learned counsel appearing for the complainant-respondent no.2, submitted that as regards the issue of the

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complainant not having any *locus standi* to file the complaint in question, he being a member of a scheduled caste community, he is himself a victim of the "atrocity" committed by the petitioner under Section 3(1)(u) of the Act, he having suffered mental, psychological and emotional harm and with him therefore being a victim even in terms of Section 2(ec) thereof.

Mr. Sheoran further submitted that any person who has knowledge about the commission of an offence can file a complaint/an FIR as an informant, as per well settled law.

37. As regards the contention on behalf of the petitioner that the District Police, Hansi, has no jurisdiction to register the FIR, Mr. Sheoran submitted that the words in question having been used on the social media platform, Instagram, with the video seen by the said respondent in Hansi and by millions of people across the country and even abroad, the question of the Hansi police not having jurisdiction, would not arise.

In that context, he relied upon a judgment of the Supreme Court in *Amish Devgan* (supra), wherein it was held as follows:-

> "**16.** We reject the contention of the petitioner that criminal proceedings arising from the impugned FIRs ought to be quashed as these FIR were registered in places where no "cause of action" arose. Section 179 of the Criminal Procedure Code provides that an offence is triable at the place where an act is done or its consequence ensues. It provides:
>
> **179. Offence triable where act is done or consequence ensues.-** When an act is an offence by reason of anything which has bene done and of a consequence which has ensued, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued."

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37. As regards the complaint lodged at Gurugram (on 05.08.2020), learned counsel submitted that respondent no.2 categorically again states that he does not know the person who had filed that complaint.

38. As regards the petitioner having used the word *bhangi* in the context of an inebriated person, learned counsel for respondent no.2 again reiterated that the said contention is completely an after-thought, with the petitioner neither having stated so in his petition, nor even in the apology that he tendered in June 2020.

Mr. Sheoran therefore submitted that if indeed the word had been used in that context, that would have been the first thing that the petitioner would have stated in his apology and consequently the argument being raised time and again to that effect before this court by learned senior counsel for the petitioner, is wholly an after-thought and an ingenious addition to the written submissions made.

In that context, learned counsel further submitted that even as per the affidavit filed by the SSP, Hansi, the said word is used in the Northern India, in common parlance, as a derogatory reference to a person belonging to a Scheduled Caste and is not used in the context of a person who is intoxicated, with the word used in the latter context being *Nasherdi.*

In support of that argument, learned counsel for respondent no.2 relied upon a judgment of the Supreme Court in **Swaran Singh v. State** (2008) 8 SCC 435, wherein it was observed as follows:-

> "**22.** It may be mentioned that when we interpret Section 3(1)(x) of the Act we have to see the purpose for which the Act was enacted. It was obviously made to prevent indignities, humiliation and harassment to the members of SC/ST

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community, as is evident from the statement of objects and reasons of the Act. Hence, while interpreting Section 3(1)(x) of the Act, we have to take into account the popular meaning of the word *"chamar"* which it has acquired by usage, and not the etymological meaning. If we go by the etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation."

39. As regards whether or not any offence punishable under the provisions of Sections 153-A and 153-B of the IPC are made out or not, Mr. Sheoran submitted that the investigation still not being complete, whether or not there was any *mens rea* in the context of the said offences, would be a matter to be determined by the investigating agency, with the SPs' affidavit being to the effect that a *prima facie* case is made out against the petitioner.

40. In the context of the offence punishable under Section 3(1)(u) of the Act, learned counsel for respondent no.2 submitted that the word *bhangi* has been used in a derogatory manner by the petitioner in the conversation in question and therefore is derogatory to the entire Scheduled Castes community, thereby bringing his action within the purview of the said provision.

Learned counsel submitted that a perusal of the Statement of Objects and Reasons of the Amendment Act of 2016, by which Section 3 was amended, shows that the said provision was added to specifically deal with certain forms of atrocities on Scheduled Castes, as had been occruing in recent years.

He submitted that wherever the word "intention" is a pre-requisite as regards the commission of any atrocity/offence under the Act, the

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said word ("intention/intentionally") is specifically mentioned, such as in clauses (c), (r), (w) (i) of sub-section (1) of Section 3, as also in sub-section (2) of Section 3.

However, there is no mention of that word ("intention"), or of the word "knowledge", in Section 3(1)(u) of the Act and consequently, he contended that no specific intention is required to be proved as regards the commission of any offence punishable under the said provision.

41. Mr. Sheoran next submitted that in fact offences punishable under Section 3 of the Act are defined as an "atrocity" in Section 2(1)(a) thereof and in fact there is no requirement of any sanction for invoking the said provision, unlike a sanction required in the context of an offence punishable under Section 153-A of the IPC.

He further submitted in that context that in fact there is no need of any two communities being involved to invoke the provisions of Section 3(1)(u) as the said provision was inserted in the Act to specifically deal with such atrocities.

42. Learned counsel for respondent no.2 next referred to an order of the Supreme Court in **Munmun Dutta v. State of Haryana** WP(Crl.) no.241 of 2021, to submit that in similar circumstances it was held that the petitioner therein could not take advantage of the judgment in the case of *R.S. Bharathi* (supra), with the Supreme Court therefore having denied the relief of quashing the FIR to that petitioner.

43. As regards the apology tendered by the petitioner in June 2020, learned counsel for respondent no.2 submitted that the said apology came only as an after-thought about 1½ to 2 months after the words were uttered,

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and after the FIR had been already registered.

He next submitted in that context that even in *Amish Devgans'* case (supra), the Supreme Court had refused to quash the FIR in question there, solely on the basis of any apology issued by the accused.

44. As regards the judgment cited on behalf of the petitioner in **Subhash Kashinath Mahajan v. State of Maharashtra** 2018 (6) SCC 454, Mr. Sheoran reiterated that the said judgment has been reviewed by the Supreme Court in *Union of India v. State of Maharashtra* (supra), holding as follows:-

> "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** [**Lalita Kumar v. Stae of U.P.** (2014) 2 SCC 1: (2014) 1 SCC (Cri) 524] 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....."

45. Last, learned counsel for respondent no.2 submitted that as held in *Neeharikas'* case (supra), there are specific guidelines laid down for quashing of an FIR by invoking jurisdiction under Section 482 of the Cr.P.C. and, as he submits, the present case is not one which would fall within the ambit of such guidelines to quash the FIR, the petitioner in any case not having denied uttering the words in question.

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Consequently, he submitted that the petition deserves to be dismissed.

46. Mr. Neeraj Poswal, learned AAG, Haryana, other than reiterating what has been stated by learned counsel for respondent no.2, specifically relied upon the affidavit of the SP, Hansi, as also the first affidavit of the DSP, to submit that the District Police having found that a case is made out against the petitioner, *prima facie*, with the matter still being under investigation, there would be no ground whatsoever to quash the FIR, even in terms of the ratio of the judgment in *Neeharikas'* case.

Learned State counsel also relied upon the following judgments in that context:-

i) **Jitual Jentilal Kotecha v. State of Gujarat and others** 2021 SCC Online SC 1045 and

ii) **Kaushik Chatterjee v. State of Haryana and others** (CRM-M no.13690 of 2019, decided on 29.05.2019 by a co-ordinate Bench of this court).

47. Having considered the matter, first of course the preliminary issue raised by the petitioner as regards the District Police, Hansi, not having any jurisdiction to register the FIR, needs to be considered.

As noticed, the contention in that regard is that the petitioner having uttered the words in question during a conversation that he was holding while he was in Mumbai and the person with whom he was holding the conversation (Rohit Sharma) also not being present at Hansi at that time, the complainant, who is a resident of Hansi, could not have registered a complaint there.

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That contention has to be rejected in my opinion, in view of the fact that admittedly the conversation between the petitioner and Rohit Sharma, was *via* a social media application (Instagram), and as per learned counsel for the complainant-respondent no.2, it could have been viewed anywhere across the world and consequently, whoever was watching such live Instagram chat, no matter at what place such person was located at that time, would have a right to institute a complaint if aggrieved by any part of such conversation/chat, he/she obviously having heard it at the place where such person was located.

In that context, the judgment cited by Mr. Sheoran, in *Amish Devgans'* case (supra), needs to be referred to.

In that case, there was a TV programme in which certain offensive words were alleged to have been said by the petitioner before the Supreme Court, while hosting a TV show and in that context it was held as follows:-

> "**A.** ***First Prayer – Whether the FIRs should be quashed?***
>
> *(i)* ***Cause of action***
>
> ***16.*** We reject the contention of the petitioner that criminal proceedings arising from the impugned FIRs ought to be quashed as these FIRs were registered in places where no "cause of action" arose. Section 179 of the Criminal Procedure Code provides that an offence is triable at the place where an act is done or its consequence ensues. It provides:
>
> > "**179. Offence triable where act is done or consequence ensues.--** When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued."
>
> **17.** The debate-show hosted by the petitioner was broadcast on a widely viewed television network. The audience, including the

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complainants, were located in different parts of India and were affected by the utterances of the petitioner; thus, the consequence of the words of the petitioner ensued in different places, including the places of registration of the impugned FIRs.

18. Further, sub-section (1) of Section 156 of the Criminal Procedure Code provides that any officer in charge of a police station may investigate any cognizable case which a court having jurisdiction over the local limits of such station would have the power to inquire into or try. Thus, a conjoint reading of Sections 179 and 156(1) of the Criminal Procedure Code make it clear that the impugned FIRs do not suffer from this jurisdictional defect."

Consequently, it is held that the FIR has not been registered by the District Police, Hansi, without jurisdiction, and that in the circumstances, the local police has jurisdiction to do so.

It is also to be of course noticed that even if the petitioner did not see the video clip exactly at the same time as the petitioner was making the statement in question, but subsequently saw it after it had become 'viral' on social media, in my opinion the cause of action would still arise at the place where it was viewed, it having been admitted that the utterance was actually made not by way of a private conversation between two persons but on a live chat on social media.

48. As regards the complainant not having any *locus standi* to file the complaint, I do not agree with the contentions raised by learned senior counsel for the petitioner in that regard either because it is not denied anywhere that the complainant-respondent no.2 belongs to a Scheduled Caste and consequently if, upon viewing the video clip in question, he felt aggrieved of the word used, as a member of a Scheduled Caste (whether or not belonging to the caste referred to as *bhangi*), he would be a victim in the opinion of this court, even in terms of Section 2(ec) of the Act, as has been referred to by learned senior counsel for the petitioner

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and has been reproduced in paragraph 27 hereinabove.

As per the definition in the said clause, a victim means any individual who belongs to a Scheduled Caste or Scheduled Tribe and who suffers or experiences physical, mental, psychological, emotional or monetary harm or harm to his property, as a result of the commission of any offence punishable under the Act.

Thus, if respondent no.2, belonging to a Scheduled Caste, felt mentally, emotionally or psychologically hurt by the usage of the phrase and word in question, this court would not hold that he is not a victim who would not have *locus standi* to file a complaint in that regard.

Thus, it is held that he would fall within the definition of victim as defined in the aforesaid provision.

49. Of course, the contention made on behalf of the petitioner that respondent no.2 is a habitual complainant and engages in filing false and fictitious complaints against prominent people for publicity, is not something that this court would comment on at this stage, with the matter still stated to be under investigation, but even if it is presumed for the sake of argument that he does file such complaints only against such celebrities, and possibly may be doing so for publicity also, that still would not change the fact that being a member of a Scheduled Caste, he may have been hurt emotionally/psychologically/mentally, on hearing a word pertaining to a particular caste, used in a derogatory manner.

50. As regards the contention on behalf of the petitioner that this court vide its order dated 12.10.2021, passed in *Bhagwant Singh Randhawas'* case (supra), directed all Senior Superintendents of Police (in Punjab) that an opinion should be taken from the District Attorney as to whether a complainant falls within the definition of a victim, other than the fact that I may have reservations (with all due respect) on that direction, yet, this court

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itself having gone into that issue hereinabove, of whether or not respondent no.2 can be a victim, and having held that he would fall within that definition, and further more, even the SP, Hansi and the DSP, in their affidavits, have stated that the opinion of the District Attorney was taken (though not specifically with regard to whether the complainant would actually fall within the said definition or not), that argument is also rejected.

51. The next contention of learned senior counsel for the petitioner, on which he very vehemently argued time and again, is to the effect that the word used by the petitioner was in the context of an inebriated person.

First of course this court has to notice that (as has been pointed out by learned counsel for respondent no.2), neither in his public apology made on June 05, 2020 (Annexure P-1 with the petition), did the petitioner say anything even remotely to that effect, nor in fact has he even stated that anywhere in the petition, with that contention having been first raised before this court in oral arguments (though subsequently stated in the rejoinder filed by the petitioner, to the replies filed by the respondents).

Further, as per the affidavit of the SP, Hansi, the word that is normally used in this part of the country to refer to a person in an inebriated state, is *Nasherdi,* and with the word *bhangi* is actually used in reference to a particular community notified to be a Scheduled Caste in all States of Northern India at least (and also in various other States across the country as per the reply of respondent no.2).

In that context, the judgment relied upon by learned counsel for respondent no.2, in *Swaran Singhs'* case (*supra*), can also be referred to wherein their Lordships held that:-

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> "**22.** It may be mentioned that when we interpret Section 3(1)(x) of the Act we have to see the purpose for which the Act was enacted. It was obviously made to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the statement of objects and reasons of the Act. Hence, while interpreting Section 3(1)(x) of the Act, we have to take into account the popular meaning of the word *"chamar"* which it has acquired by usage, and not the etymological meaning. If we go by the etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation."

Thus, in the opinion of this court what would hold good in the context of Section 3(1)(x) of the Act, would also hold equally good for any offences punishable under Sections 3(1)(u) and 3(1)(s).

Yet, this court would obviously not make any final comment in that regard and would leave it to the investigating agency to come to its own final conclusion after the investigation is complete. In fact, even this comment may not have been made by this court, looking at the stage of the investigation, but was needed to be made, as one of the prime contentions raised on behalf of the petitioner in this petition seeking quashing of the FIR, is to that effect.

52. Coming next to the contention that the word that the petitioner uttered would not amount to the commission of an offence punishable either under Section 153-A, or 153-B of the IPC.

In that context, the said provisions are reproduced hereinbelow:-

> **"153A. Promoting enmity between different groups on ground 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

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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 illwill between different religious, racials, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity,[or]

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Offence committed in place of worship, etc.--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.

xxxxx xxxxx xxxxx

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153B. Imputations, assertions prejudicial to national-integration.

(1)Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

(a)makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b)asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or commnity, be denied or deprived of their rights as citizens of India, or

(c)makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(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."

53. Looking first at Section 153-A in detail, in my opinion though the act of the petitioner in using the phrase and word in question would not fall either

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under clause (c) of sub-section (1) (and definitely would not fall under sub-section (2)), yet, whether or not it falls within the ambit of clause (b) of sub-section (1), would otherwise be something that the investigating agency would have perhaps needed to look into in detail and then come to its own finding thereupon,but for the fact that learned counsel has cited a judgment of the Supreme Court in *Balwant Singhs'* case (*supra).*

As regards the observation made hereinabove on the said phrase/word not falling within the ambit of clause (c), very obviously the petitioner was not organizing any activity intending that the participants therein would use or be trained to use criminal force or violence etc. as is postulated in the said provision.

Though at first blush even clause (a) would not be attracted, however what needs to be noticed is that the word used in the opening two lines of the said clause is that a person who by even spoken word, "promotes or attempts to promote, on grounds of .... caste or community ....".

Hence, whereas this court will hold even now at this stage that the petitioner obviously did not attempt to promote or even also did not intend to promote any disharmony by usage of the phrase looking at the context in which it was used, but if it results in actually him promoting such disharmony or ill-will, it may have been a moot point as to whether the offence came within the ambit of the said provision. Yet, the Supreme Court having held in that case, where an obviously separatist phrase was used by the accused therein, that it still was not a word which had the tendency or intention of creating public dis-order or disturbance to law and order, in the petitioners' case also it must be held by this court, on the touchstone of the ratio of that judgment, that the said offence would not be made out despite what is contained even in clause (a) and (b) of sub-section (1) thereof.

54. Thus, the petitioner having used the particular word (*bhangi*) in the context of a friend making his father dance, in my opinion an offence punishable

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under Section 153-A of the IPC is not made out, there not being any intention to promote any disharmony or feeling of enmity etc. between any two or more sections of society as per the said judgment

That would be so even in terms of the ratio of the judgment in *Manzar Sayeed Khans'* case (supra), wherein it was held that:-

> "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." (Reference paragraph 16, SCC edition).

55. Coming then to whether or not an offence punishable under Section 153-B of the IPC is even *prima facie* made out against the petitioner or not.

In the opinion of this court, even a bare reading of any of the clauses in sub-section (1) of Section 153-B would not apply to the phrase or the word used by the petitioner in any manner, because very obviously it was not his intention to say either that any particular caste does not bear true faith and allegiance to the Constitution of India or does not uphold the integrity of India; or that any member of such particular caste or class should be denied or deprived of his/her right as a citizen of India and further, neither did he make any assertion, council, plea or appeal concerning the obligation of any class or caste so as to cause disharmony or feelings of hatred or enmity or ill-will between any person.

56. Thus, it is held that as regards the allegation that the petitioner committed offences punishable under Sections 153-A and 153-B of the IPC, the one falling under Section 153-B is *prima facie* also not made out and as regards Section 153-A, on the touchstone of the aforesaid judgments in *Balwant Singhs'* and *Manzar Sayeed Khans'* cases (both supra), again no such offence would be made out.

57. Coming then to the all important question of whether the phrase and the word used by the petitioner would *(prima facie)* fall within the purview of either

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Section 3(1)(s) or Section 3(1)(u) of the Act, or not.

For convenience, the said provisions are being reproduced here:-

> "**3. Punishments for offences of atrocities.-** (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-
>
> (s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;
>
> xxxxx xxxxx xxxxx
>
> (u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;
>
> xxxxx xxxxx xxxxx
>
> shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

58. Though on the reasoning given hereinabove pertaining to Sections 153-A and 153-B of the IPC, at first blush it would seem that no case would be made out against the petitioner even *prima facie* under the said provisions also, with Section 3(1)(u) being otherwise very similarly worded as Sections 153-A(1)(a) of the IPC (and as has been vehemently argued by learned senior counsel for the petitioner), however, what this court obviously needs to consider is that the Act of 1989 is a special Act enacted for the welfare of the Scheduled Castes and the Scheduled Tribes with the statement of the objects and reasons thereof reading as follows in its initial part itself:-

> "Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons."

After the Act was enacted in the year 1989, it has been extensively amended in the year 2016, with such amendment including the definition of victim as contained in clause (ec) of Section 2(1), as also by substituting the Section 3 and

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bringing within its ambit a far larger number of acts/actions, to be classified as offences.

Further, there would also be some substance in what Mr. Sheoran has submitted in the context of the word "intention" have been used in clauses (c),(r), (w)(i) of sub-section (1) of Section 3 of the Act, but the word ("intention") not having been used in clause (u) thereof.

However, that is something that the investigating agency would finally determine with no further comment made on merits by this court.

59. Though otherwise I would completely agree with learned senior counsel for the petitioner that the petitioner did not intentionally mean to cause any dis-respect or harm or even humiliation to any class of people, especially with him not having uttered the word either in reference to a member of a Scheduled Caste (the father of his friend not being a member of any Scheduled Caste), nor did he address it specifically to any person who belongs to the Scheduled Caste, with the person with whom he was having a chat (Rohit Sharma) also not being a member of a Scheduled Caste; yet, as regards the contention raised by learned counsel for respondent no.2, to the effect that the word has been used as a pejorative, i.e. has been used derisively, or is used in the context of a person not being held in good esteem, *prima facie* at least I would agree with him, especially with the Superintendent of Police also having stated in her affidavit (dated 23.04.2021) that the said word (*bhangi*) is used in the Northern India normally in the context of a particular class/caste, in a derogatory sense.

In that context, it also needs to be stated here that in common parlance many words are used in a derogatory sense even though the actual meaning of the word would actually be a reference to either a relationship or would be in reference to a particular caste/class of a person.

One such example would be the word used in Hindi/Punjabi for a

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brother-in-law (*Saala*). If used in the correct context, the said word actually means nothing more than a brother-in-law, but it is too often used as a pejorative in common parlance, and thus is used as a derogatory/abusive word. However, no offence is usually made out by the use of that word because it does not pertain to any specific caste or community of people and is actually a term common to all castes in most parts of Northern India.

Hence, the usage of that word is usually not taken to be a criminal offence.

60. However, when a word denoting a caste or class of people who belong to a Scheduled Caste/Scheduled Tribe is used in a derogatory sense, I would agree with learned counsel for respondent no.2 at least *prima facie* (for the purpose of this petition), that it has become common parlance to use it as a pejorative word, thereby bringing indignity to that entire class of people, if it is used to its describe a person not behaving in a 'good manner', in the eyes of the person using the word.

The petitioner having used the word *(bhangi)* to state that his friend did not do something good by making his father dance in a ceremony, seemingly at least, at this stage, the word was not used in any good sense but, as said, in a pejorative manner.

In that context, it is to be noticed that (as has also been pointed out by Mr. Sheoran, learned counsel for the complainant-respondent no.2), the dictionary meaning of the “pejorative” is a word expressing contempt or dis-approval.

61. Hence, in the opinion of this court, unless the investigating agency finally comes to a different conclusion, it cannot be said at least as regards lodging the FIR, that a person belonging to a Scheduled Caste would not be hurt by the use of the word as such pejorative, when the word traditionally otherwise pertains to a class of persons/caste of a person, i.e. a notified Scheduled Caste in almost all of Northern India, as also in many other States in the country (as per the copies of

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the notifications annexed with the reply of respondent no.2).

Thus, even though this court has already observed hereinabove, that the petitioner very obviously did not actually intend to insult anyone, yet, he having used a word pertaining to a specific Scheduled Caste, in a derogatory sense, in my opinion even the ratio of the judgment cited by Mr. Sheoran would hold, at least *prima facie* for the purpose of this petition (seeking that the FIR be quashed), to the effect that: "The use of word *Harijan, Dhobi,* etc. is often used by people belonging to the so-called upper castes as a word of insult, abuse and derision; and as citizens of the country, we should always bear in "mind and heart that no person or community should be insulted or looked down upon and that nobodys' feelings should be hurt." (Reference paragraph 16 of *Manju Devis'* case (supra).

Of course, in *Mayer Hans Georges'* case (supra), as has been relied upon by learned senior counsel for the petitioner, it was held that *mens rea* is an essential ingredient of a statutory offence and simply because the object of a statute is to promote welfare activities or to eradicate grave social evils, the question of whether or not there is an element of a guilty mind, would still need to be determined.

However, first of course the Act in question was obviously not in existence in 1965 and though the ratio of that judgment would otherwise apply to any offences punishable under the Act also in view of what has been held therein (as reproduced in paragraph 30 hereinabove), yet, the Act having also been extensively amended in 2016, with the aims and objectives thereof stating that the a members of a scheduled castes and scheduled tribes are subjected to various indignities, humiliations and harassment, and in *Manju Devis'* case (supra) it having been held that words denoting such castes are being used as word of insult, abuse and derision, in my opinion at least for the purpose of this petition seeking quashing of the FIR in question, the absence of *mens rea* would not entitle the petitioner to

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quashing of the FIR, the effect of the usage of the word (*bhangi)* obviously not being in a good light by any chance but as a pejorative.

As already observed by this court in the first order passed, issuing notice of motion in this case, all persons, specifically celebrities, need to be very careful in the language that they use, especially when they are using it on social media etc.

In that context, the judgment in *Amish Devgans'* case (supra) can also be cited (reference paragraph 76 thereof, SCC edition).

It also needs to be observed by this court that in particular circumstances of the cases, the Supreme Court has jurisdiction under Article 142 of the Constitution to come to a particular conclusion to do complete justice between the parties. However, very obviously, a high court exercising jurisdiction under Section 482 of the Cr.P.C. does not have that power by any yardstick.

Therefore, in view of the discussion hereinabove, specifically keeping in view the aims and objectives of the Act, in my opinion if the effect of the word used is causing emotional hurt, humiliation etc. to any members of scheduled castes and scheduled tribes, a particular caste name having been used in a derogatory manner, even if the intention of the petitioner was obviously not to actually so hurt any person, yet it would not entitle this court to quash the FIR on that ground, even though learned Senior counsel for the petitioner submitted that the petitioner is willing to do charitable work for the welfare of Scheduled Castes and Scheduled Tribes.

62. It is to be again observed by this court that the Act of 1989, as amended up to date, is intended to serve the purpose of betterment of the lives of persons belonging to the Scheduled Castes and Scheduled Tribes and consequently, in the opinion of this court, usage of word -names denoting particular Scheduled Castes or communities as derogatory words, would amount to insulting any such person belonging to that caste and hence, whether any offence under the provision of that Act is made out or not, would need to be properly investigated by the investigating agency concerned.

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Consequently, as regards whether any offence punishable under the provisions of the Act has been committed or not, would be investigated by the investigating agency; and it is not a case where the FIR can be quashed qua the allegation pertaining to those offences.

63. In a nutshell, though this court has held that no offence punishable under Section 153-B of the IPC would be even *prima facie* made out against the petitioner and as regards any offence punishable under Section 153-A of the Code, it would not be made out on the touchstone of the ratio of the judgments of the Supreme Court in *Balwant Singh* and *Manzar Sayeed Khans'* cases (both supra); and despite the wordings used in Section 3(1)(u) of the Act being to a large extent *pari materia* with Section 153-A(1)(a), yet, in my opinion, whereas *mens rea* would be a pre-requisite for invoking the provisions of Section 153-A (even as per the aforesaid judgments), however that would not necessarily be so as regards any offence punishable under the Act, specifically Section 3(1)(u) thereof, the objective of the Act being also to ensure that members of Scheduled Castes and Scheduled Tribes are not subjected to any indignities and humiliation.

Therefore even if the intention of the user of the word may not be so but the result thereof is to cause 'indignities/humiliation to any member of a scheduled caste, by reference to any name of a caste as a derogatory word or a pejorative, the intention of the user of such word may become insignificant, looking at the aims and objective of the Act; further seeing what has been held by the Supreme Court in *Manju Devis'* case (supra), that the use of such words like *Harijan, Dhobhi* etc. as words of insult, abuse and derision, can amount to being offences under the Act. (Reference paragraphs 16 and 17 of that judgment, SCC edition).

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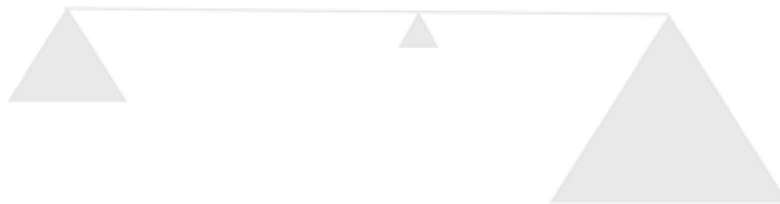
64. As a result of the aforesaid discussion, this petition is partly allowed to the extent that qua the offences punishable under Sections 153-A and 153-B of the IPC, the said offences are not found to be offences committed by the petitioner even *prima facie* for the reasons given hereinabove in paragraphs 53 to 56 (especially on the touchstone of the judgment in *Balwant Singhs'* case (supra), as regards Section 153-A); but as regards the commission of any offence punishable under the provisions of the Act of 1989, the petition is dismissed, with the investigating agency to continue with its investigation wholly impartially and independently, to come to its own conclusion as to whether any such offence has been committed by the petitioner or not.

February 17, 2022 (AMOL RATTAN SINGH)
dharamvir/dinesh JUDGE



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