Citation Analysis
Constitution section
Right to freedom of speech Art. 32, Art. 19 of the ConstitutionS. 482 CrPC
Supreme Court of India
Vinod Dua vs Union Of India

Writ Petition (Criminal) No.154 of 2020

Facts as enumerated by the Supreme Court

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

"On 30th March, 2020, Mr. Vinod Dua, in his show namely The Vinod Dua Show on YouTube, has made unfounded and bizarre allegations (details of particular moments are provided below) by stating following facts at 5 minutes and 9 seconds of the video, he has stated that Narendra Modi has used deaths and terror attacks to garner votes. At 5 minutes and 45 seconds of the video, he claims that the government does not have enough testing facilities and has made false statements about the availability of the Personal Protective Kits (PPE) and has stated that there is no sufficient information on those. Further, he also went on to state that ventilators and sanitizer exports were stopped only on 24th March 2020. A true copy of the video link is: https:/ /www.youtube.com/watch?vvijFD_tgvv8. That the said allegations are false and the claims are bizarre and unfounded. Mr. Vinod Dua has spread false and malicious news by stating that the PM has garnered votes through acts of terrorism. This directly amounts to inciting violence amongst the citizens and will definitely disturb public tranquillity. This is an act of instigating violence against the government and the Prime Minister. He also creates panic amongst the public and disturbs public peace by trying to spread false information, such as, the government does not have enough testing facilities which is absolutely false. The government has sufficient facilities to curb the pandemic and have been taking all the measures to control the pandemic.

By making such false statements, Mr. Vinod Dua spread fear amongst the people. This video will only create a situation of unrest amongst the public which will result in panic and people not obeying the lockdown to come out and hoard essentials which is absolutely unnecessary. Mr. Vinod Dua has circulated these rumours with the intent to defeat the Lockdown by creating an impression that there is a complete failure of the institution and it will become hard to survive this lockdown, if not acted upon immediately. It is unfortunate that during such a pandemic, which is of such a magnitude, instead of helping out the citizens and encouraging them to stay at home, the show and the host,Mr. Vinod Dua, is only interested in raising his show's TRP and making it successful. The rumours were spread with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public, whereby any person may be induced to commit an offence against the state or against the public tranquillity. Since the matter relates to Public health, considering the gravity and seriousness of the matter, this dishonest and fraudulent act of the Mr. Vinod Dua should be taken with utmost seriousness. The aforesaid act of Mr. Vinod Dua is an offence punishable under Sections 124-A, 268, 501 and 505 of the Indian Penal Code, 1860 (IPC). Unless strict action is taken, it will result in unrest in public and go against public tranquillity. Hence, you are requested to take strict appropriate legal action against Mr. Vinod Dua and punish him accordingly."

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

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

The affidavit in reply filed on behalf of the State referred to Sections 52 and 54 of the DM Act1 as under:

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

"Section 52. Punishment for false claim.-

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

The Disaster Management Act, 2005 Section 54. Punishment for false warning.-

Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic, shall on conviction, be punishable with imprisonment which may extend to one year or with fine." Thereafter, the affidavit indicated following steps taken by the Investigating machinery:

"Having found that complaint disclosed cognizable offence, the FIR was registered. In respectful submission of the respondent, since a FIR discloses prima facie commission of cognizance offence, no interference may be warranted.

That after registration of FIR, on 07.05.2020 the complainant was called in the Police Station but he did not appear as he was out of station. On 08.05.2020 complainant joined the investigation in the Police Station and produced one DVD containing telecast dated 30.03.2020 as referred in the FIR which was taken into possession by the Investigating Officer through seizure memo and statement of Sh. Ajay Shyam was recorded u/s 161 Cr.P.C.

That on 11.05.2020, Investigating Officer visited Cyber Crime Police Station from where Notice u/sec 91 Cr.P.C. was sent to Google and YouTube through e-mail for obtaining information in respect to URL of the channel and URL of the post."

Cases referred

In Jacob Mathew v. State of Punjab and Another(2005) 6 SCC 1 , this Court issued certain guidelines with regard to prosecution of Medical Professionals accused of rashness or negligence while discharging their professional duties; which decision was not only affirmed by the Constitution Bench of this Court

in Lalita Kumari v. Government of Uttar Pradesh and Others(2014) 2 SCC 1 but this Court went on to explain that a preliminary inquiry could validly be insisted upon in certain categories of cases.

In Alakh Alok Srivastava vs. Union of India, this Hon'ble Court, in its order dated 31.03.2020 (Coram: Hon'ble Chief Justice and Hon'ble Justice Nageswara Rao) held as under:

"Disobedience to an order promulgated by a public servant would result in punishment under Section 188 of the Indian Penal Code. An advisory which is in the nature of an order made by the public authority attracts Section 188 of the Indian Penal Code." In Arnab Ranjan Goswami vs. Union of India and Others(2020) 14 SCC 12 in which the relief was granted against multiple FIRs arising from the same television show and pending at places other than Mumbai but this Court refused to exercise jurisdiction under Article 32 of the Constitution for the purpose of quashing the basic FIR registered at Mumbai. The relevant discussion in that behalf was: -

" A litany of our decisions — to refer to them individually would be a parade of the familiar — has firmly established that any reasonable restriction on fundamental rights must comport with the proportionality standard, of which one component is that the measure adopted must be the least restrictive measure to effectively achieve the legitimate State aim. Subjecting an individual to numerous proceedings arising in different jurisdictions on the basis of the same cause of action cannot be accepted as the least restrictive and effective method of achieving the legitimate State aim in prosecuting crime. The manner in which the petitioner has been subjected to numerous FIRs in several States, besides the Union Territories of Jammu and Kashmir on the basis of identical allegations arising out of the same television show would leave no manner of doubt that the intervention of this Court is necessary to protect the rights of the petitioner as a citizen and as a journalist to fair treatment (guaranteed by Article 14) and the liberty to conduct an independent portrayal of views. In such a situation to require the petitioner to approach the respective High Courts having jurisdiction for quashing would result into a multiplicity of proceedings and unnecessary harassment to the petitioner, who is a journalist.

The issue concerning the registration of numerous FIRs and complaints covering different States is however, as we will explain, distinct from the investigation which arises from FIR No. 164 of 2020 at N.M. Joshi Marg Police Station in Mumbai. The petitioner, in the exercise of his right under Article 19(1)(a), is not immune from an investigation into the FIR which has been transferred from Police Station Sadar, District Nagpur City to N.M. Joshi Marg Police Station in Mumbai. This balance has to be drawn between the exercise of a fundamental right under Article 19(1)(a) and the investigation for an offence under the CrPC. All other FIRs in respect of the same incident constitute a clear abuse of process and must be quashed.

We hold that it would be inappropriate for the Court to exercise its jurisdiction under Article 32 of the Constitution for the purpose of quashing FIR No. 164 of 2020 under investigation at N.M. Joshi Marg Police Station in Mumbai. In adopting this view, we are guided by the fact that the checks and balances to ensure the protection of the petitioner's liberty are governed by the CrPC. Despite the liberty being granted to the petitioner on 24-4-20209, it is an admitted position that the petitioner did not pursue available remedies in the law, but sought instead to invoke the jurisdiction of this Court. Whether the allegations contained in the FIR do or do not make out any offence as alleged will not be decided in pursuance of the jurisdiction of this Court under Article 32, to quash the FIR. The petitioner must be relegated to the pursuit of the remedies available under the CrPC, which we hereby do. The petitioner has an equally efficacious remedy available before the High Court. We should not be construed as holding that a petition under Article 32 is not maintainable. But when the High Court has the power

under Section 482, there is no reason to by-pass the procedure under the CrPC, we see no exceptional grounds or reasons to entertain this petition under Article 32. There is a clear distinction between the maintainability of a petition and whether it should be entertained. In a situation like this, and for the reasons stated hereinabove, this Court would not like to entertain the petition under Article 32 for the relief of quashing the FIR being investigated at N.M. Joshi Police Station in Mumbai which can be considered by the High Court. Therefore, we are of the opinion that the petitioner must be relegated to avail of the remedies which are available under the CrPC before the competent court including the High Court."

in Amish Devgan vs. Union of India and Others(2021) 1 SCC 1 which in turn referred to the decisions of this Court in State of H.P. vs. Pirthi Chand and Another(1996) 2 SCC 37 and State of UP vs. OP Sharma(1996) 7 SCC 705 as well as the decision in Arnab Ranjan Goswami8. In Amish Devgan10, this Court did not refuse to entertain the petition at the threshold but proceeded to consider the issues on merits and finally declined the prayer made by the petitioner for quashing of the FIRs.

The following observations are noteworthy: -

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

Constitution Bench in Ramji Lal Modi v. State of U.P.(AIR pp. 622-23, paras 8-9spoke thus:

" It is pointed out that Section 295-A has been included in Chapter XV, Penal Code which deals with offence relating to religion and not in Chapter VIII which deals with offences against the public tranquillity and from this circumstance it is faintly sought to be urged, therefore, that offences relating to religion have no bearing on the maintenance of public order or tranquillity and consequently a law creating an offence relating to religion and imposing restrictions on the right to freedom of speech and expression cannot claim the protection of clause (2) of Article 19. A reference to Articles 25 and 26 of the Constitution, which guarantee the right to freedom of religion, will show that the argument is utterly untenable. The right to freedom of religion assured by those articles is expressly made subject to public order, morality and health. Therefore, it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order. Those two articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order."

In Mahendra Singh Dhoni v. YerraguntlaShyamsundar(2017) 7 SCC 760 , the justification for the registration of an FIR under Section 295-A had come up for consideration before this Court. Appreciating the act done by the petitioner therein, the Court quashed the FIR for an offence under Section 295-A IPC.

American decisions Urquhart v. Brown205 U.S. 179 and Hooney v. Kolohan, 294 U.S. 10 as showing that the Supreme Court of the United States ordinarily required that whatever judicial remedies remained open to the applicant in Federal and State Courts should be exhausted before the remedy in the Supreme Court be it habeas corpus or certiorari - would be allowed.

in Daryao and others v. The State of U.P. and others it is observed,

" There can be no doubt that the fundamental right guaranteed by Art. 32(1) is a very important safeguard for the protection of the fundamental rights of the citizens, and as a result of the said guarantee this Court has been entrusted with the solemn task of upholding the fundamental rights of the citizens of this country. The fundamental rights are intended not only to protect individual's rights but they are based on high public policy. Liberty of the individual and the protection of his fundamental rights are the very essence of the democratic way of life adopted by the constitution, and it is the privilege and the duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by the Constitution itself. It is because of this aspect of the matter that in Romesh Thappar v. The State of Madras20, in the very first year after the Constitution came into force, this Court rejected a preliminary objection raised against the competence of a petition filed under Art. 32 on the ground that as a matter of orderly procedure the petitioner should first have resorted to the High Court under Art. 226, and observed that "this Court in thus constituted the protector and guarantor of the fundamental rights, and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringements of such rights"."

In Jagisha Arora vs. State of Uttar Pradesh and Another25, this Court entertained a petition under Article 32 of the Constitution against an order of remand passed by the jurisdictional magistrate despite objection that the order must be challenged in accordance with the provisions of the Code. The discussion was:-

"2. The fundamental rights guaranteed under the Constitution of India and in particular Articles 19 and 21 of the Constitution of India are non-negotiable.

3. The learned Additional Solicitor General appearing on behalf of the State has opposed this allegation on various technical grounds including the ground that there is an order of remand passed by the jurisdictional Magistrate. It is also contended that the High Court should have first been approached.

in State of Maharashtra v. Tasneem Rizwan Siddiqueethe question of whether a writ of habeas corpus could be maintained in respect of a person who was in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, had already been settled by this Court. the order of remand ought to be challenged in accordance with the provisions of the Criminal Procedure Code.

in Union of India vs. Paul Manickam and Another(2003) 8 SCC 342 it is observed:-

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

27. On facts, it has been established that the statements attributed to the petitioner that the Prime Minister had used deaths and terror attacks to garner votes or that the Prime Minister had garnered

votes through acts of terrorism, were not made in the Talk Show. The true translation of the original episode in Hindi, has been placed on record. No such assertions find place in the true translation nor were any objections raised that the translated version was in any way incorrect. The petitioner did say that the air strikes by India on Balakot and attacks on Pathankot and Pulwama were used as political events to garner votes but no allegations were made against the Prime Minister as was stated in the F.I.R.

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

Decisions regarding the scope of section 124(A) of the IPC

1. In Kedar Nath Singh v. State of Biharthe conviction of Kedar Nath Singh under Sections 124A and 505(b) of the IPC3 was affirmed by the High Court; and the view taken by the High Court was paraphrased as under:

"In the course of his judgment, the learned Judge observed that the subject-matter of the charge against the appellant was nothing but a vilification of the Government; that it was full of incitements to revolution and that the speech taken as a whole was certainly seditious. It is not a speech criticising any particular policy of the Government or criticising any of its measures. He held that the offences both under Sections 124-A and 505(b) of the Indian Penal Code had been made out." 28.2

2. This Court dealt with the decisions in Bangobashi case (Queen Empress v. Jogendra Chunder BoseI.L.R. 19 Cal. 35 (1898)and Queen-Empress v.Balgangaddhar TilakI.L.R. 22 Bom. 112, as under:

"The first case in India that arose under the section is what is known as the Bangobasi case (Queen-Empress v. Jogendra Chunder Bose which was tried by a jury before Sir Comer Petheram, C.J. While charging the jury, the learned Chief Justice explained the law to the jury in these terms:

"Disaffection means a feeling contrary to affection, in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man's sentiments or action and yet to like him.The meaning of the two words is so distinct that I feel it hardly necessary to tell you that the contention of Mr Jackson cannot be sustained. If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words or any feeling of disaffection, in fact, produced by them. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government and to hold it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling."

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

"The offence as defined by the first clause is exciting or attempting to excite feelings of disaffection to the Government. What are 'feelings of disaffection'? I agree with Sir Comer Petheram in the Bangobasi case that disaffection means simply the absence of affection. It means hatred, enmity, dislike, hostility, contempt and every form of ill-will to the Government. 'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind towards the Government. You will observe that the amount or intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment: if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. In the next place, it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. It is true that there is before you a charge against each prisoner that he has actually excited feelings of disaffection to the Government. If you are satisfied that he has done so, you will, of course, find him guilty. But if you should hold that that charge is not made out, and that no one is proved to have been excited to entertain feelings of disaffection to the Government by reading these articles, still that alone would not justify you in acquitting the prisoners. For each of them is charged not only with exciting feelings of disaffection, but also with attempting to excite such feelings. You will observe that the section places on absolutely the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them, so that, if you find that either of the prisoners has tried to excite such feelings in others, you must convict him even if there is nothing to show that he succeeded. Again, it is important that you should fully realise another point. The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles, is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within Section 124-A, and would probably fall within other sections of the Penal Code.

But even if he neither excited nor intended to excite any rebellion or outbreak or forcible resistance to the authority of the Government, still if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section. I am aware that some distinguished persons have thought that there can be no offence against the section unless the accused either counsels or suggests rebellion or forcible resistance to the Government. In my opinion, that view is absolutely opposed to the express words of the section itself, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance, the test of guilt. I can only account for such a view by attributing it to a complete misreading of the explanation attached to the section, and to a misapplication of the explanation beyond its true scope."

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

"……The Jury, by a majority of six to three, found Shri Balgangadhar Tilak guilty. Subsequently, he, on conviction, applied under clause 41 of the Letters Patent for leave to appeal to the Privy Council. The application was heard by a Full Bench consisting of Farran, C.J., Candy and Strachey, JJ. It was contended before the High Court at the leave stage, inter alia, that the sanction given by the Government was not sufficient in law in that it had not set out the particulars of the offending articles,

and, secondly, that the Judge misdirected the jury as to the meaning of the word "disaffection" insofar as he said that it might be equivalent to "absence of affection". With regard to the second point, which is the only relevant point before us, the Full Bench expressed itself to the following effect:

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

The case was then taken to Her Majesty in Council, by way of application for special leave to appeal to the Judicial Committee. Before Their Lordships of the Privy Council, Asquith, Q.C., assisted by counsel of great experience and eminence like Mayne, W.C. Bannerjee and others, contended that there was a misdirection as to the meaning of Section 124-A of the Penal Code in that the offence had been defined in terms too wide to the effect that "disaffection" meant simply "absence of affection", and that it comprehended every possible form of bad feeling to the Government.

4.In QueenEmpress v. JogendraChander Bose. It was also contended that the appellant's comments had not exceeded what in England would be considered within the functions of a public journalist, and that the misdirection complained of was of the greatest importance not merely to the affected person but to the whole of the Indian press and also to all Her Majesty's subjects; and that it injuriously affected the liberty of the press and the right to free speech in public meetings. But in spite of the strong appeal made on behalf of the petitioner for special leave, the Lord Chancellor, delivering the opinion of the Judicial Committee, while dismissing the application, observed that taking a view of the whole of the summing up they did not see any reason to dissent from it, and that keeping in view the Rules which Their Lordships observed in the matter of granting leave to appeal in criminal cases, they did not think that the case raised questions which deserve further consideration by the Privy Council, the statement of law made by the Federal Court was not accepted by the Privy Council. The discussion was: -

"While dealing with a case arising under Rule 34(6)(e) of the Defence of India Rules under the Defence of India Act (35 of 1939), Sir Maurice Gwyer, C.J., speaking for the Federal Court, made the following observations in the case of NiharenduDutt Majumdar v. King-Emperor31 and has pointed out that the language of Section 124-A of the Indian Penal Code, which was in parimateria with that of the Rule in question, had been adopted from the English Law, and referred with approval to the observations of Fitzerald, J., in the case quoted above; and made the following observations which are quite apposite;

"... generally speaking, we think that the passage accurately states the law as it is to be gathered from an examination of a great number of judicial pronouncements.

The first and most fundamental duty of every Government is the preservation of order, since order is the condition precedent to all civilisation and the advance of human happiness. This duty has no doubt been sometimes performed in such a way as to make the remedy worse than the disease; but it does not cease to be a matter of obligation because some on whom the duty rests have performed it ill. It is to this aspect of the functions of Government that in our opinion the offence of sedition stands related. It is the answer of the State to those who, for the purpose of attacking or subverting it, seek (to borrow from the passage cited above) to disturb its tranquillity, to create public disturbance and to promote disorder, or who incite others to do so. Words, deeds or writings constitute sedition, if they have this intention or this tendency; and it is easy to see why they may also constitute sedition, if they seek, as the phrase is, to bring Government into contempt. This is not made an offence in order to minister to the wounded vanity of Government, but because where Government and the law cease to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder, is thus the gist of the offence. The acts or words complained of must either incite todisorder or must be such as to satisfy reasonable men that that is their intention or tendency." This statement of the law was not approved by Their Lordships of the Judicial Committee of the Privy Council in the case of King-Emperor v. Sadashiv Narayan Bhalerao.

The Privy Council, after quoting the observations of the learned Chief Justice in Niharendu case31 while disapproving of the decision of the Federal Court, observed that there was no statutory definition of "sedition" in England, and the meaning and content of the crime had to be gathered from many decisions." (Emphasis supplied)

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

"Thus, there is a direct conflict between the decision of the Federal Court in Niharenducase and of the Privy Council in a number of cases from India and the Gold Coast, referred to above. It is also clear that either view can be taken and can be supported on good reasons. The Federal Court decision takes into consideration, as indicated above, the pre-existing Common Law of England in respect of sedition. It does not appear from the report of the Federal Court decision that the rulings aforesaid of the Privy Council had been brought to the notice of Their Lordships of the Federal Court." 28.6

The scope of section 124A of the IPC3 was considered thus: -

"The section was amended by the Indian Penal Code Amendment Act (IV of 1898). As a result of the amendment, the single explanation to the section was replaced by three separate explanations as they stand now.

The section, as it now stands in its present form, is the result of the several A.O.s of 1937, 1948 and 1950, as a result of the constitutional changes, by the Government of India Act, 1935, by the Independent Act of 1947 and by the Indian 74 IA 89 Constitution of 1950. Section 124A, as it has emerged after successive amendments by way of adaptations as aforesaid, reads as follows:

"Whoever by words, either spoken or written, or by signs or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with transportation for life or any shorter term to which fine may be added or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1. The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2. Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section.

Explanation 3, Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section." This offence, which is generally known as the offence of Sedition, occurs in Chapter VI of the Indian Penal Code, headed 'Of offences against the State'.

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

"Section IX. Sedition and Inciting to Disaffection – We are now concerned with conduct which, on the one hand, fall short of treason, and on the other does not involve the use of force or violence. The law has here to reconcile the right of private criticism with the necessity of securing the safety and stability of the State. Sedition may be defined as conduct which has, either as its object or as its natural consequence, the unlawful display of dissatisfaction with the Government or with the existing order of society.

The seditious conduct may be by words, by deed, or by writing. Five specific heads of sedition may be enumerated according to the object of the accused. This may be either.

1. to excite disaffection against the King, Government, or Constitution, or against Parliament or the administration of justice;

2. to promote by unlawful means, any alteration in Church or State;

3. to incite a disturbance of the peace ;

4. to raise discontent among the King's subjects ;

5. to excite class hatred.

It must be observed that criticism on political matters is not of itself sedition. The test is the manner in which it is made. Candid and honest discussion is permitted. The law only interferes when the discussion passes the bounds of fair criticism. More especially will this be the case when the natural consequence of the prisoner's conduct is to promote public disorder." This statement of the law is derived mainly from the address to the Jury by Fitzerald, J., in the case of Reg v. Alexander Martin Sullivan33. In the course of his address to the Jury, the learned Judge observed as follows:

"Sedition is a crime against society, nearly allied to that of treason and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the empire. The objects of sedition generally are to induce discontent and insurrection, and stir up (1867-71) 11 Cox's Criminal Law Cases, 44 at p. 45 pposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitution of the realm, and generally all endeavours to promote public disorder." That the law has not changed during the course of the centuries is also apparent from the

6. Coleridge, J., in the course of his summing up to the Jury in the case of Rex v. Aldred34:

"Nothing is clearer than the law on this head — namely, that whoever by language, either written or spoken, incites or encourages others to use physical force or violence in some public matter connected with the State, is guilty of publishing a seditious libel.

The word 'sedition' in its ordinary natural signification denotes a tumult, an insurrection, a popular commotion, or an uproar; it implies violence or lawlessness in some form...." In that case, the learned Judge was charging the Jury in respect of the indictment which contained the charge of seditious libel by a publication by the defendant." 28.6.1

Finally, while considering the applicability of Section 124A of the IPC3, especially in the context of the Right guaranteed under Article 19(1)(a) of the Constitution, this Court concluded: -

"It has not been questioned before us that the fundamental right guaranteed by Article 19(1)(a) of the freedom of speech and expression is not an absolute right. It is common ground that the right is subject to such reasonable (1911-13) 22 Cox's Criminal Law Cases, 1 at p. 3 restrictions as would come within the purview of clause (2), which comprises (a) security of the State, (b) friendly relations with foreign States, (c) public order, (d) decency or morality, etc. etc. With reference to the constitutionality of Section 124-A or Section 505 of the Indian Penal Code, as to how far they are consistent with the requirements of clause (2) of Article 19 with particular reference to security of the State and public order, the section, it must be noted, penalises any spoken or written words or signs or visible representations, etc. which have the effect of bringing, or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law. Now, the expression "the Government established by law" has to be distinguished from the persons for the time being engaged in carrying on the administration.

"Government established by law" is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence, the continued existence of the Government established by law is an essential condition of the stability of the State. That is why "sedition", as the offence in Section 124-A has been characterised, comes, under Chapter VI relating to offences against the State. Hence, any acts within the meaning of Section 124-A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc. which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term "revolution", have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.

It has not been contended before us that if a speech or a writing excites people to violence or have the tendency to create public disorder, it would not come within the definition of "sedition". What has been contended is that a person who makes a very strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of Government or acts of public officials, might also come

within the ambit of the penal section. But in our opinion, such words written or spoken would be outside the scope of the section. In this connection, it is pertinent to observe that the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with a view to punishing offences against the State, is undertaken. Such a legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the sine qua non of a democratic form of Government that our Constitution has established. This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. The Court has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambit of a citizen's fundamental right guaranteed under Article 19(1)(a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order. We have, therefore, to determine how far the Sections 124-A and 505 of the Indian Penal Code could be said to be within the justifiable limits of legislation. If it is held, in consonance with the views expressed by the Federal Court in the case of NiharenduDutt Majumdar v. King-Emperor31 that the gist of the offence of "sedition" is incitement to violence or the tendency or the intention to create public disorder by words spoken or written, which have the tendency or the effect of bringing the Government established by law into hatred or contempt or creating disaffection in the sense of disloyalty to the State, in other words bringing the law into line with the law of sedition in England, as was the intention of the legislators when they introduced Section 124-A into the Indian Penal Code in 1870 as aforesaid, the law will be within the permissible limits laid down in clause (2) of Article 19 of the Constitution. If on the other hand we give a literal meaning to the words of the section, divorced from all the antecedent background in which the law of sedition has grown, as laid down in the several decisions of the Judicial Committee of the Privy Council, it will be true to say that the section is not only within but also very much beyond the limits laid down in clause (2) aforesaid.

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

8. in the case of Virendra v. State of Punjab(1958) SCR 308 at p. 317 Any law which is enacted in the interest of public order may be saved from the vice of constitutional invalidity. If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make them unconstitutional in view of Article 19(1)(a) read with clause (2). It is well settled that if

certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress [vide (1) Bengal Immunity Company Limited v. State of Bihar36 and (2) R.M.D. Chamarbaugwala v. Union of India37.] Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.

(1955) 2 SCR 603 (1957) SCR 930

9. We may also consider the legal position, as it should emerge, assuming that the main Section 124-A is capable of being construed in the literal sense in which the Judicial Committee of the Privy Council has construed it in the cases referred to above. On that assumption, is it not open to this Court to construe the section in such a way as to avoid the alleged unconstitutionality by limiting the application of the section in the way in which the Federal Court intended to apply it? In our opinion, there are decisions of this Court which amply justify our taking that view of the legal position.

10. Chamarbaugwalla v. Union of India has examined in detail the several decisions of this Court, as also of the courts in America and Australia. After examining those decisions, this Court came to the conclusion that if the impugned provisions of a law come within the constitutional powers of the legislature by adopting one view of the words of the impugned section or Act, the Court will take that view of the matter and limit its application accordingly, in preference to the view which would make it unconstitutional on another view of the interpretation of the words in question. In that case, the Court had to choose between a definition of the expression "Prize Competitions" as limited to those competitions which were of a gambling character and those which were not. The Court chose the former interpretation which made the rest of the provisions of the Act, Prize Competitions Act (42 of 1955), with particular reference to Sections 4 and 5 of the Act and Rules 11 and 12 framed thereunder, valid. The Court held that the penalty attached only to those competitions which involved the element of gambling and those competitions in which success depended to a substantial degree on skill were held to be out of the purview of the Act. The ratio decidendi in that case, in our opinion, applied to the case in hand insofar as we propose to limit its operation only to such activities as come within the ambit of the observations of the Federal Court, that is to say, activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace." (Emphasis supplied)

11. in NiharenduDutt Majumdar v. The King Emperor31. A passage from the decision of the Federal Court was quoted in Kedar Nath Singh v. State of Bihar2 but immediately preceding passage from said decision of the Federal Court is also noteworthy and was to the following effect:

"The time is long past when the mere criticism of Governments was sufficient to constitute sedition, for it is recognized that the right to utter honest and reasonable criticism is a source of strength to a community rather than a weakness. Criticism of an existing system of Government is not excluded, nor even the expression of a desire for a different system altogether. The language of S. 124-A of the Penal Code, if read literally, even with the explanations attached to it, would suffice to make a surprising number of persons in this country guilty of sedition; but no one supposes that it is to be read in this literal sense. The language itself has been adopted from English law, but it is to be remembered that in England the good sense of jurymen can always correct extravagant interpretations sought to be given by the executive Government or even by Judges themselves, and if in this country that check is absent, or practically absent, it becomes all the more necessary for the Courts, when a case of this kind comes before them, to put themselves so far as possible in the place of a jury, and to take a broad view, without refining overmuch in applying the general principles which underlie the law of sedition to the particular facts and circumstances brought to their notice.

What then are these general principles? We are content to adopt the words of a learned Judge, which are to be found in every book dealing with this branch of the criminal law: Page: "Sedition……embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquillity of the State and lead ignorant persons to subvert the Government. The objects of sedition generally are to induce discontent and insurrection, to stir up opposition to the Government, and to bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as

sedition all those practices which have for their object to excite discontent or disaffection, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or Government, the laws or the constitution of the realm and generally all endeavours to promote public disorder." Fitzgerald, J., in R. v. Sullivan33.

It is possible to criticise one or two words or phrases in this passage; "loyalty" and "dis-loyalty," for example, have a non-legal connotation also, and it is very desirable that there should be no confusion between this and the sense in which the words are used in a legal context; but, generally speaking, we think that the passage accurately states the law as it is to be gathered from an examination of a great number of judicial pronouncements." (Emphasis supplied)

Statements of law as listed by the Apex CourtfromKedar Nath Singh case on the backdrop of decisions inBalgangadhar Tilak and in King-Emperor v. Sadashiv Narayan Bhalerao

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

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

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

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

e) "The provisions of the Sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence." The reference was to Sections 124A and 505 of the IPC. Writ Petition (Criminal) No.154 of 2020 Vinod Dua vs. Union of India &Ors.

....

f) "It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order." ....

g) "we propose to limit its operation only to such activities as come within the ambit of the observations of the Federal Court, that is to say, activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace." As the statement of law at placetum (e) above indicates, it applies to cases under Sections 124-A and 505 of the IPC3. According to this Court only such activities which would be intended or have a tendency to create disorder or disturbance of public peace by resort to violence – are rendered penal.

Prominent decisions on freedom of press referred

In Romesh Thappar case20, Brij Bhushan case43, Express Newspapers (Private) Ltd. v. Union of India44, Sakal Papers (P) Ltd. v. Union of India45 and Bennett Coleman case46 this Court has very strongly pronounced in favour of the freedom of press. Of these, we shall refer to some observations made by this Court in some of them.

35. In Romesh Thappar case20 this Court said at p. 602:

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

36. In Bennett Coleman case46 A.N. Ray, C.J. on behalf of the majority said at p. 796 (SCC p. 823, para 80) thus:

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

37. In the very same case, Mathew, J. observed at p. 818: (SCC p. 846, paras 168, 169) "The constitutional guarantee of freedom of speech is not so much for the benefit of the press as it is for the benefit of the public. The freedom of speech AIR 1958 SC 578 : 1959 SCR 12 AIR 1962 SC 305 : (1962) 3 SCR 842 (1972) 2 SCC 788 : AIR 1973 SC 106 : (1973) 2 SCR 757

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

Supreme Court said:

'The constitutional guarantee of freedom of speech and press are not for the benefit of the press so much as for the benefit of all the people.' " In Griswold v. Connecticut47 the U.S. Supreme Court was of the opinion that the right of freedom of speech and press includes not only the right to utter or to print, but the right to read." B) This Court in the case of S. Rangarajan v. P. Jagjivan Ram & Ors.48 held:

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

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

43. Brandies, J., in Whitney v. California49 propounded probably the most attractive free speech theory:

"... that the greatest menace to freedom is an inert people; that public discussion is a political duty;. .. It is hazardous to discourage thought, hope and 381 US 479, 482 : 14 L Ed 2d 510 : 85 SCt 1678 (1965) 1989 (2) SCC 574 274 US 357, 375-78 (1927) : 71 L Ed 1045imagination; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones."

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

Prominent decisions in which proceedings under 153A and 505 IPC quashed

A) In Manzar Sayeed Khan vs. State of Maharashtra and Another54, it was laid down that the requisite intention to promote feelings of enmity or hatred between different classes of people, must be judged primarily by "the language of the book and the circumstances in which the book was written"; and accepted that the effect of the words must be judged from the standards of reasonable, strong minded, firm and courageous men. It was observed: -

"16. Section 153-A IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquillity. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section 153-A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning.

17. In Ramesh v. Union of India55 this Court held that TV serial Tamas did not depict communal tension and violence and the provisions of Section 153-A IPC would not apply to (2007) 5 SCC 1 (1988) 1 SCC 668 Writ Petition (Criminal) No.154 of 2020 Vinod Dua vs. Union of India &Ors.

it. It was also not prejudicial to the national integration falling under Section 153-B IPC. Approving the observations of Vivian Bose, J. in Bhagwati Charan Shukla v. Provincial Govt.56 the Court observed that:

"the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. … It is the standard of ordinary reasonable man or as they say in English law 'the man on the top of a Claphamomnibus'." (Ramesh case55, SCC p. 676, para 13)" B) In Patricia Mukhim vs. State of Meghalaya and Others57, the requisite intention to bring out the basic ingredient of offences under Sections 153A and 505 (1) (c) of the IPC3 was found to be absent. This Court observed:-

"13. In the instant case, applying the principles laid down by this Court as mentioned above, the question that arises for our consideration is whether the Facebook post-dated 04.07.2020 was intentionally made for promoting class/community hatred and has the tendency to provoke enmity between two communities. A close scrutiny of the Facebook post would indicate that the agony of the Appellant was directed against the apathy shown by the Chief Minister of Meghalaya, the Director General of Police and the DorbarShnong of the area in not taking any action against the culprits who attacked the non-tribals youngsters. The Appellant referred to the attacks on nontribals in 1979.

At the most, the Facebook post can be understood to highlight the discrimination against nontribals in the State of Meghalaya. However, the Appellant made it clear that criminal elements have no community and immediate action has to be taken against persons who had indulged in the AIR 1947 Nag 1 2021 SCC OnLine SC 258 brutal attack on non-tribal youngsters playing basketball. The Facebook post read in its entirety pleads for equality of non-tribals in the State of Meghalaya. In our understanding, there was no intention on the part of the Appellant to promote class/community hatred. As there is no attempt made by the Appellant to incite people belonging to a community to indulge in any violence, the basic ingredients of the offence under Sections 153 A and 505(1)(c) have not been made out. Where allegations made in the FIR or the complaint, even if they are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the FIR is liable to be quashed."

Ratio

1. Article 32 provides a "guaranteed" remedy for the enforcement of those rights, and this remedial right is itself made a fundamental right by being included in Part III. This Court is thus constituted the protector and guarantor of fundamental rights, and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringements of such rights
2. the practice of directing that the High Court be approached first even in cases of violation of fundamental rights, is more of a self-imposed discipline by this Court; but in glaring cases of deprivation of liberty, this Court has entertained petitions under Article 32 of the Constitution.
3. The Principles culled out in paragraph 33 hereinabove from the decision of Court in Kedar Nath Singh2 show that a citizen has a right to criticize or comment upon the measures undertaken by the Government and its functionaries, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder; and that it is only when the words or expressions have pernicious tendency or intention of creating public disorder or disturbance of law and order that Sections 124A and 505 of the IPC3 must step in.
4. In our view, the statements by the petitioner as mentioned hereinabove, if read in the light of the principles emanating from the decision in Kedar Nath Singh2 and against the backdrop of the circumstances when they were made, can at best be termed as expression of disapprobation of actions of the Government and its functionaries so that prevailing situation could be addressed quickly and efficiently. They were certainly not made with the intent to incite people or showed tendency to create disorder or disturbance of public peace by resort to violence. The petitioner was within the permissible limits laid down in the decision of this Court in Kedar Nath Singh2. It may be that certain factual details in the 3rd statement regarding the date when the ban came into effect were not completely

correct. However, considering the drift of the entire talk show and all the statements put together it cannot be said that the petitioner crossed the limits set out in the decision of this Court in Kedar Nath Singh2.

5. We are, therefore, of the firm view that the prosecution of the petitioner for the offences punishable under Sections 124A and 505 (1) (b) of the IPC3 would be unjust. Those offences, going by the allegations in the FIR and other attending circumstances, are not made out at all and any prosecution in respect thereof would be violative of the rights of the petitioner guaranteed under Article 19(1)(a) of the Constitution.

6. The other offending provision referred to in the FIR is Section 501 of the IPC3 which is printing or engraving a matter which is defamatory to any person. As a matter of fact, the cognizance with respect to an offence punishable under Chapter XXI of the IPC3 (Section 501 of the IPC3 is part of said Chapter) can be taken by a Court only upon a complaint made by the person aggrieved. Without going into such technicalities, in our view, there is nothing defamatory in the statements made by the petitioner.

7. Further, the statements of the petitioner would be covered by the second and third exceptions to Section 499 of the IPC3. In some of the cases decided by this Court, for example, in Jawaharlal Darda and Others vs. ManoharraoGanpatraoKapsikar and Another60, Rajendra Kumar Sitaram Pande and Others vs. Uttam and Another61, Vivek Goenka and Others vs. Y.R. Patil62, and S. Khushboo vs. Kanniammal and Another63, relying on exceptions to Section 499 of the IPC3, the criminal proceeding initiated against the accused were quashed. Thus, the instant proceedings, in so far as Section 501 IPC3 is concerned, also deserve to be quashed.

8. The other provision referred to in the FIR was Section 268 of the IPC3 which is nothing but the definition of "Public Nuisance" and is not a penal provision in itself which prescribes any punishment. It was also not the case of the respondent that any penal provision involving element of "Public Nuisance" was attracted in the instant case.Thus, all the offences set out in the FIR, in our considered view, are not made out at all.

9. The second prayer made in the Writ Petition is asking for the constitution of the Committee completely outside the scope of the statutory framework. Similar such exercise of directing constitution of a Committee was found inconsistent with the statutory framework in the decisions discussed above. We are conscious that the directions issued in Jacob Mathew4 had received approval by a Constitution Bench in Lalita Kumari5, but those guidelines issued in Jacob Mathew4 stand on parameter which are completely distinguishable from the subsequent decisions of three Judge Bench of this Court in Union of India vs. State of Maharashtra and Others70 and in Social Action Forum for manavAdhikar and Another vs. Union of India, Ministry of Law and Justice and Others71. Any relief granted in terms of second prayer would certainly, in our view, amount to encroachment upon the field reserved for the legislature. We have, therefore, no hesitation in rejecting the prayer and dismissing the Writ Petition to that extent.

10. It must however be clarified that every Journalist will be entitled to protection in terms of Kedar Nath Singh2, as every prosecution under Sections 124A and 505 of the IPC3 must be in strict conformity with the scope and ambit of said Sections as explained in, and completely in tune with the law laid down in Kedar Nath Singh2.
