

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSCRIMINAL APPEAL NO(S).1545/2025

IMRAN PRATAPGADHI

APPELLANT(S)

VERSUS

STATE OF GUJARAT & ANR.

RESPONDENT(S)

(IA No.17958/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT IA No.17960/2025 - EXEMPTION FROM FILING O.T.)

[HEARD BY : HON. ABHAY S. OKA AND HON. UJJAL BHUYAN, JJ.]

Date : 28-03-2025: This matter was called on for pronouncement of
judgment todayFor Appellant(s): Mr. Vaibhav Srivastava, Adv.
Ms. Sugandha Anand, AORFor Respondent(s): Mr. Tushar Mehta, Solicitor General
Ms. Swati Ghildiyal, AOR
Mr. Ojaswa Pathak, Adv.
Ms. Rajeshwari Shankar, Adv.

Hon'ble Mr. Justice Abhay S. Oka pronounced the reportable judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Ujjal Bhuyan.

The Appeal is allowed in terms of the signed reportable judgment. The operative portion of the reportable judgment reads thus:

"42. Following is the summary of our conclusions:

(i) Sub-Section (3) of Section 173 of the BNSS makes a significant departure from Section 154 of CrPC. It provides that when information relating to the commission of a cognizable offence which is made punishable for 3 years or more but less than 7 years is received by an officer-in-charge of a police station, with the prior permission of a superior officer as mentioned therein, the police officer is

empowered to conduct a preliminary inquiry to ascertain whether there exists a *prima facie* case for proceeding in the matter. However, under Section 154 of the CrPC, as held in the case of *Lalita Kumari*², only a limited preliminary inquiry is permissible to ascertain whether the information received discloses a cognizable offence. Moreover, a preliminary inquiry can be made under the CrPC only if the information does not disclose the commission of a cognizable offence but indicates the necessity for an inquiry. Sub-Section (3) of Section 173 of the BNS is an exception to sub-Section (1) of Section 173. In the category of cases covered by sub-Section (3), a police officer is empowered to make a preliminary inquiry to ascertain whether a *prima facie* case is made out for proceeding in the matter even if the information received discloses commission of any cognizable offence.

(ii) Under sub-Section (3) of Section 173 of the BNS, after holding a preliminary inquiry, if the officer comes to a conclusion that a *prima facie* case exists to proceed, he should immediately register an FIR and proceed to investigate. But, if he is of the view that a *prima facie* case is not made out to proceed, he should immediately inform the first informant/complainant so that he can avail a remedy under sub-Section (4) of Section 173.

(iii) In case of the offence punishable under Section 196 of the BNS to decide whether the words, either spoken or written or by sign or by visible representations or through electronic communication or otherwise, lead to the consequences provided in the Section, the police officer to whom information is furnished will have to read or hear the words written or spoken, and by taking the same as correct, decide whether an offence under Section 196 is made out. Reading of written words, or hearing spoken words will be necessary to determine whether the contents make out a case of the commission of a cognizable offence. The same is the case with offences punishable under Sections 197, 299 and 302 of BNS. Therefore, to ascertain whether the information received by an officer-in-charge of the police station makes out a cognizable offence, the officer must consider the meaning of the spoken or written words. This act on the part of the police officer will not amount to making a preliminary inquiry which is not permissible under sub-Section (1) of Section

(iv) The police officers must abide by the Constitution and respect its ideals. The philosophy of the Constitution and its ideals can be found in the preamble itself. The preamble lays down that the people of India have solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure all its citizens liberty of thought, expression, belief, faith and worship. Therefore, liberty of thought and expression is one of the ideals of our Constitution. Article 19(1)(a) confers a fundamental right on all citizens to freedom of speech and expression. The police machinery is a part of the State within the meaning of Article 12 of the Constitution. Moreover, the police officers being citizens, are bound to abide by the Constitution. They are bound to honour and uphold freedom of speech and expression conferred on all citizens.

(v) Clause (2) of Article 19 of the Constitution carves out an exception to the fundamental right guaranteed under sub-clause (a) of clause (1) of Article 19. If there is a law covered by clause (2), its operation remains unaffected by sub-clause (a) of clause (1). We must remember that laws covered by the clause (2) are protected by way of an exception provided they impose a reasonable restriction. Therefore, when an allegation is of the commission of an offence covered by the law referred to in clause (2) of Article 19, if sub-Section (3) of Section 173 is applicable, it is always appropriate to conduct a preliminary inquiry to ascertain whether a *prima facie* case is made out to proceed against the accused. This will ensure that the fundamental rights guaranteed under sub-clause (a) of clause (1) of Article 19 remain protected. Therefore, in such cases, the higher police officer referred to in sub-Section (3) of Section 173 must normally grant permission to the police officer to conduct a preliminary inquiry.

(vi) When an offence punishable under Section 196 of BNS is alleged, the effect of the spoken or written words will have to be considered based on standards of reasonable, strong-minded, firm and courageous individuals and not based on the standards of people with weak and oscillating minds. The effect of the spoken or written words cannot be judged on the basis of

the standards of people who always have a sense of insecurity or of those who always perceive criticism as a threat to their power or position.

(vii) There is no absolute rule that when the investigation is at a nascent stage, the High Court cannot exercise its jurisdiction to quash an offence by exercising its jurisdiction under Article 226 of the Constitution of India or under Section 482 of the CrPC equivalent to Section 528 of the BNSS. When the High Court, in the given case, finds that no offence was made out on the face of it, to prevent abuse of the process of law, it can always interfere even though the investigation is at the nascent stage. It all depends on the facts and circumstances of each case as well as the nature of the offence. There is no such blanket rule putting an embargo on the powers of the High Court to quash FIR only on the ground that the investigation was at a nascent stage.

(viii) Free expression of thoughts and views by individuals or group of individuals is an integral part of a healthy civilised society. Without freedom of expression of thoughts and views, it is impossible to lead a dignified life guaranteed by Article 21 of the Constitution. In a healthy democracy, the views, opinions or thoughts expressed by an individual or group of individuals must be countered by expressing another point of view. Even if a large number of persons dislike the views expressed by another, the right of the person to express the views must be respected and protected. Literature including poetry, dramas, films, stage shows including stand-up comedy, satire and art, make the lives of human beings more meaningful. The Courts are duty-bound to uphold and enforce fundamental rights guaranteed under the Constitution of India. Sometimes, we, the Judges, may not like spoken or written words. But, still, it is our duty to uphold the fundamental right under Article 19 (1)(a). We Judges are under an obligation to uphold the Constitution and respect its ideals. If the police or executive fail to honour and protect the fundamental rights guaranteed under Article 19 (1)(a) of the Constitution, it is the duty of the Courts to step in and protect the fundamental rights. There is no other institution which can uphold the fundamental rights of the citizens.

(ix) 75 years into our republic, we cannot be seen to be so shaky on our fundamentals that mere recital of a poem or for that matter, any form of art or entertainment, such as, stand-up comedy, can be alleged to lead to animosity or hatred amongst different communities. Subscribing to such a view would stifle all legitimate expressions of view in the public domain which is so fundamental to a free society.

43. Though this judgment is authored by one of us (Abhay S. Oka, J.), it is based on valuable inputs by Ujjal Bhuyan, J.

44. In the circumstances, the impugned order deserves to be set aside. We, accordingly, quash and set aside the impugned order. We also quash and set aside FIR No. 11202008250014 of 2025, registered with City A-Division Police Station, Jamnagar, and further proceedings based thereon. The Appeal is accordingly allowed."

Pending applications stand disposed of accordingly.

(ASHISH KONDLE)
ASTT. REGISTRAR-cum-PS

(AVGV RAMU)
COURT MASTER (NSH)

[THE SIGNED REPORTABLE JUDGMENT IS PLACED ON THE FILE]