* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 25th March 2022**
Pronounced on: 13th June 2022

\+ W.P.(CRL) 1624/2020 & CRL.M.A. 13859/2020

BRINDA KARAT & ANR. ... Petitioners

Through: Ms. Tara Narula, Mr. Adit S. Pujari, Ms. Aparajita Sinha and Mr. Chaitanya Sundriyal, Advocates

versus

STATE OF NCT OF DELHI THROUGH ITS STANDING COUNSEL & ANR. ... Respondents

Through: Mr. Amit Mahajan and Mr. Rajat Nair, SPP with Mr. Dhruv Pande and Mr. Kritagya Kumar Kait, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

"यद्यदाचरति श्रेष्ठस्तत्तदेवेतरो जनः। स यत्प्रमाणं कुरुते लोकस्तदनुवर्तते।।"

1. The *shloka* from *Bhagwad Gita* succinctly states - whatever action is performed by a leader, common men follow in his footsteps; and whatever standards he sets by his acts, are pursued by his subjects. "With great power comes great responsibilities" - goes another popular quote.

The persons who are mass leaders and occupy high offices must conduct themselves with utmost integrity and responsibility. Leaders elected in a democracy like that of India, owe their responsibility not only towards the electorate in their own constituency, but also towards the society/nation as a whole and ultimately to the Constitution. It is they who are the role models for the ordinary masses. Thus, it does not befit or behove the leaders to indulge in acts or speeches that cause rifts amongst communities, create tensions, and disrupt the social fabric in the society.

2. Hate speeches especially delivered by elected representatives, political and religious leaders based on religion, caste, region or ethnicity militate against the concept of fraternity, bulldoze the constitutional ethos, and violates Articles 14, 15, 19, 21 read with Article 38 of the Constitution and is in blatant derogation of the fundamental duties prescribed under Article 51-A (a), (b), (c), (e), (f), (i), (j) of the Constitution and therefore warrant stringent peremptory action on the part of Central and State Governments.

3. The instant petition arises out of the impugned order of dismissal of Application of Petitioners under Section 156 (3) of Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code") dated 26.08.2020 passed in Ct. Case No. 04/2020 titled Brinda Karat & Anr. v. State, by the Court of the Ld. Additional Chief Metropolitan Magistrate (I), Rouse Avenue Courts, Delhi (hereinafter referred to as the "ACMM"). By way of the instant petition, the petitioners have prayed as under:

a. *Pass a Writ of Certiorari setting aside/quashing Order dated 26.08.2020 passed in Brinda Karat & Anr. v. State, Ct. Cas. No. 04/2020, by the Ld. Additional Chief Metropolitan Magistrate (I), Rouse Avenue Courts, Delhi; and*

b. *Without prejudice to Prayer (i), exercise jurisdiction under Article 227 read with S.483 CrPC directing expeditious disposal of Applications under Section 156(3) CrPC and direct that technical objections and maintainability be decided at the threshold to avoid prejudice to the Complainant and wastage of judicial time; and*

c. *Issue directions in the nature of a writ of mandamus under Article 226 of the Constitution to the Respondent State to widely publicize the manner in which such prior sanction can be obtained by a complainant / applicant preferring a Complaint under Section 200 CrPC, for the offences mentioned in Ss. 195 and 196 CrPC, to facilitate access to justice.*

FACTUAL MATRIX

4. The matter has arisen out of the facts as detailed hereunder:

a. Both the petitioners are politicians of the Communist Party of India (Marxist) (*hereinafter "*CPI(M)*"*). As per the contents of the petition, Petitioner No. 1 is a member of the Polit Bureau of the CPI(M) and a former Member of Parliament. Petitioner No. 2 is a member of the Central Committee of the CPI(M), in addition to being the Secretary of Delhi State Committee of CPI(M).

b. It is the petitioners' case that on 27th January 2020, Mr. Anurag Thakur, a Union Minister and Member of Parliament, allegedly made a hate speech at a rally in Rithala shouting the slogan "*desh ke gaddaron ko*" and exhorting the crowd to respond with "*goli maaron saalon ko*".

c. It is further alleged that on 28th January 2020, Mr. Parvesh Verma, Member of Parliament from West Delhi Lok Sabha Constituency, made inflammatory hate speeches while campaigning for the Bharatiya Janata Party (*hereinafter "*BJP*"*). Allegations are also levelled against him *qua* his interview to ANI, wherein he is stated to have threatened use of force to remove protestors at Shaheen Bagh and promoting hatred and enmity by portraying them as invaders.

d. As per the petition, the petitioners on 29th January 2020 made a complaint against Mr. Anurag Thakur and Mr. Parvesh Verma to the Commissioner of Police, Delhi asking for registration of FIR against the two alleging them of having committed serious cognizable offences of inciting communal enmity, extending threats and making statements prejudicial to national integration.

e. In furtherance of the said complaint, on 31st January 2020, another letter was addressed to the Commissioner stating therein that because of inaction of police over

their complaint has led to an incident wherein, according to the letter, an armed man shot at protesting students. In this second letter the petitioners again urged the Commissioner to take immediate action, file FIRs and take preventive steps against Hindu Sena.

f. On 2nd February 2020, the petitioners, by way of a letter addressed to the SHO, Parliament Street Police Station, New Delhi, made a request to immediately file FIRs against Mr. Anurag Thakur and Mr. Parvesh Verma, enclosing therein the two aforementioned representations made earlier to the Commissioner.

g. Subsequently, on 5th February 2020, the Petitioners filed an Application under Section 156(3) of Code seeking registration of FIR before the Additional Chief Metropolitan Magistrate (I), Rouse Avenue Courts, Delhi, which was registered as Ct. Case No.04/2020. The Application, *inter alia*, sought for registration of FIR against the accused persons for offences under Sections 153A/153B/295A/298/504/505/506 of the Indian Penal Code, 1860.

h. ATR was called from the DCP District New Delhi. Subsequently, as per the record of the proceedings of the Court below, on 11th February 2020, ATR was filed by the Special Investigation Unit of Crime Branch and was taken on record. On the said date, the Crime Branch was

directed to expedite the preliminary inquiry and file the detailed ATR in next 15 days.

i. In the proceedings dated 26th February 2020, the status report was filed by the investigating agency, wherein it was recorded that on the basis of allegations levelled in the complaint, *prima facie* no cognizable offence was found to be committed. The Copy of the Status Report was supplied to the other side and arguments were heard. The matter was posted for orders on 2nd March 2020.

j. On 2nd March 2020, the Court of ACMM-I was informed that a WP (CRL) 565/2020 titled as "Harsh Mander and Another v. GNCTD and Others" was pending before this High Court containing the same averments and seeking the same relief as was being made in the petitioners' application. In view of the fact that the High Court was already seized of the matter and had listed the matter for 13th April 2020 giving the opportunity to the Union of India for filing its response, the ACMM chose not to pass any order in the application till the outcome of the said writ petition.

k. On 26th August 2020, the ACMM dismissed the Petitioners' Application under Section 156(3) of the Code, recording the finding that the application was not tenable in the eyes of law on the ground that there was no previous sanction obtained by the

complainants/petitioners from the competent authority to prosecute the named individuals for the offences alleged in the complaint.

l. Aggrieved by the said Order, the petitioners have approached this Court under Articles 226/227 of the Constitution of India read with Sections 482/483 of the Code praying *inter alia* for setting aside of the impugned Order.

SUBMISSIONS

5. Learned counsel appearing on behalf of the petitioners submitted that the communal, incendiary, and hateful speeches made by Mr. Verma and Mr. Thakur directly contributed towards fostering an atmosphere of hatred and division targeting a particular religious community. It is submitted that the speeches further served to embolden persons and contributed significantly to a rise in hostility and enmity against the anti-CAA protestors, resulting in multiple incidents of threats and violence. Some such incidents were enumerated in the Petitioner's Application under Section 156(3) CrPC and are also enumerated in the present Petition.

6. Additionally, it is submitted that the Hon'ble Supreme Court in ***Amish Devgan v. Union of India and Ors. (2021) 1 SCC 1,*** has held that the impact of hate speech depends on the person who has uttered the words and a speech by a person of influence, such as a top government functionary or political leader of following, therefore carries far more

credibility and impact than a common person. The Supreme Court further held that malicious intent can be derived from the context of the speech itself, the identity of the speaker, the targeted and non-targeted group, the context and circumstances when such speech was made and proximate nexus with the harm.

7. It is submitted that in the present case, the speeches were made by influential political leaders to large groups of people during elections with the clear intent to promote hatred and enmity against persons from a particular community. It is stated that the tacit endorsement of such communal sentiment resulted in multiple escalating incidents of threats and violence.

8. Further, it is submitted that the hate speeches made by Mr. Thakur and Mr. Verma evidently sought to refer to an identifiable set of persons, fomenting inimical sentiments against them, and such persons clearly fall within a "religion" or "community" of persons as envisaged in Section 153A of IPC.

9. It is submitted that the context in which the utterance was made by the accused makes it amply clear that the same constitutes hate speech. It is stated that the speeches were also *prima facie* intended to promote hatred, enmity and ill-will against such a community. Even without such escalation, the content of the speeches is divisive and communal in nature.

10. It is also submitted that the ingredients of the offences of hate speech under Sections 153A/ 153B/ 295A/ 298/ 504/ 505/ 506 of IPC

have clearly been made out in the facts and circumstances of this case. The police have not only a legal obligation but also a duty of care and protection towards the public and ought to have registered an FIR on the Complaint of the Applicant at the first instance.

11. It is submitted that it is a settled law that no sanction is required in order to register an FIR by the police; failing which, it is well-within the powers of the Magistrate to direct investigation under Section 156(3) of Code. It is submitted that if the said judicial power is ousted, there will be no recourse for genuine complainants against the inaction of the police in a case such as the present one.

12. It is submitted that even otherwise, there is no procedure prescribed for an individual to approach the competent authorities to obtain sanction under Section 196 of the Code, prior to filing an Application under Section 156(3) of the Code. If an individual were to approach authorities for grant of sanction, such individual would necessarily need to collect all evidence that is required, along with a request, as the police/ CBI does in the case of obtaining prior sanction under Section 19 PC Act/ Section 197 of the Code, in terms of the judgment of the Hon'ble Supreme Court in ***CBI v. Ashok Kumar Aggarwal*** **(2014) 14 SCC 295**. The following extract is indicative of the burden that would be placed on a member of the general public prior to sending a request for sanction:

> *"8. In view of the above, the legal propositions can be summarised as under:*

(a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

(d) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law."

13. It is stated that Section 196 of the Code is different from Section 19 of the Prevention of Corruption Act and Section 197 of Code. A bare reading of ***Anil Kumar & Ors. v. M.K. Aiyappa & Anr.*** **(2013) 10 SCC 705**, and of ***Manju Surana v. Sunil Arora,*** **(2018) 5 SCC 557**, would indicate that the requirement of prior sanction even at the stage of adjudication of an Application under Section 156 (3) of the Code, was in

order to prevent vexing public servants. The following extracts indicate the same:

a. Anil Kumar (supra):

"13. …We find it difficult to accept that contention. Subsection (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C."

b. Manju Surana (supra):

"… Mr. Tushar Mehta, learned Additional Solicitor General sought to canvas the view taken in the last two judgments referred to aforesaid to submit that application of mind was necessary to exercise power under Section 156(3) of the Cr.P.C. and that credibility of information was to be weighed before ordering investigation (Ramdev Food Products (P) Ltd. v. State of Gujarat). It was, thus, submitted that allegation against a public servant under the P.C. Act offences are technical in nature and would require a higher evaluation standard and thus the Magistrates ought to apply their mind before ordering investigation against public servant. The consequences of starting investigation under Section 156(3) of the Cr.P.C., it was submitted, would result in the police registering an FIR (Suresh Chand Jain v. State of Madhya Pradesh and Mohd. Yousuf v. Afaq Jahan). Thus, a situation may arise where a Magistrate may exercise his power under Section 156(3) of the

Cr.P.C. in a routine manner resulting in an FIR being registered against a public servant, who may have no role in the allegation made."

14. It is submitted that reliance placed upon ***Anil Kumar (supra)*** to submit that prior sanction is required for directions under Section 156(3) of the Code is erroneous since, the findings therein pertained specifically to sanction under Section 19 of the Prevention of Corruption Act, 1988 (PC Act) and not with respect to the provisions of the Code. Further, the said findings are contrary to settled law establishing that proceedings under Section 156(3) of the Code would not amount to taking cognizance and has been doubted in ***Manju Surana (supra)***. The judgment of the Supreme Court in ***Manju Surana (supra)*** interprets ***Anil Kumar (supra)*** as applicable to cases under the PC Act and further refers to the question of whether sanction under the PC Act is necessary to maintain an application under Section 156(3) of the Code to a larger bench. This interpretation is a binding precedent as on date and has not been doubted or challenged as yet. It is therefore submitted that the judgment of the Hon'ble Supreme Court in ***Anil Kumar (supra)*** must be read as limited to the PC Act, and even that ratio is not good law as on date, as argued in the following paragraphs.

15. It is further submitted that ***Anil Kumar (supra)*** is *per incuriam* several decisions of the Hon'ble Supreme Court, including ***RR Chari v. State of UP (AIR 1951 SC 207)***, and ***Gopal Das Sindhi v. State of Assam (AIR 1961 SC 986)***. Section 196 of the Code categorically bars a court from taking cognizance for the offences prescribed therein without a prior sanction. It is settled law in a plethora of cases including, ***Manju Surana***

(supra), Gopal Das Sindhi (supra), Tula Ram v. Kishore Singh (1977) 4 SCC 459, State of Karnataka v. Pastor P. Raju (2006) 6 SCC* 728** that application of mind for ordering an investigation under Section 156(3) would not amount to taking cognizance. The judgment in ***Pastor P. Raju (supra) in fact holds as under:

> *"A plain reading of this provision will show that no Court can take cognizance of an offence punishable under Section 153-B or sub- section (2) or sub-section (3) of Section 505 of Indian Penal Code or a criminal conspiracy to commit such offence except with the previous sanction of the Central Government or of the State Government or of the District Magistrate. The opening words of the Section are "No Court shall take cognizance" and consequently the bar created by the provision is against taking of cognizance by the Court. There is no bar against registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation, as contemplated by Section 173 Cr.P.C. If a criminal case is registered, investigation of the offence is done and the police submits a report as a result of such investigation before a Magistrate without the previous sanction of the Central Government or of the State Government or of the District Magistrate, there will be no violation of Section 196(1-A) Cr.P.C. and no illegality of any kind would be committed."*

16. It is submitted that this Court in ***Bhagwati Devi Gupta v. Star Infratech, 2021 SCC OnLine Del 3995,*** observed that once a bench of the Supreme Court has doubted the correctness of an earlier bench of co-equal strength and referred the issue to a larger bench, it would be debatable whether courts lower in hierarchy should continue to follow the earlier decision.

17. It is further submitted that the Hon'ble Supreme Court in ***Jayant and Ors. v. State of Madhya Pradesh, (2021) 2 SCC 670*** dealt with Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 ("MMDR Act"), which bars a court from taking cognizance of an offence punishable under the MMDR Act except upon complaint made in writing by a person authorized in this behalf by the Central or State Government. In this case, the Supreme Court upheld the order of the Ld. Magistrate who in exercise of *suo moto* powers conferred under Section 156(3) CrPC had directed the police to register an FIR, conduct investigation and submit a report under the MMDR Act. Relying on settled law, the Supreme Court held that at this stage, it cannot be said that the Ld. Magistrate had taken any cognizance of the alleged offences attracting the bar under Section 22 MMDR Act, and that there is no bar against registration or investigation of a criminal case or submission of a report by the police under Section 173(8) of Code.

18. It is also stated that while the contents of the aforesaid speeches *prima facie* demonstrate the commission of cognizable offences, the inaction on the part of state agencies, and non-registration of FIR, provides implicit sanction for such utterances to be repeated, as it did in the present case. As a matter of public policy, and in furtherance of the fundamental precepts of criminal law, the power of the Ld. Judicial Magistrate under Section 156(3) of the Code to ensure the discharge of the duty of the state agencies to register the FIR in a timely manner must not and cannot be abrogated from.

19. In light of the aforesaid, it is therefore prayed that there is no bar to the exercise of power under Section 156(3) of the Code and that the Order dated 26th August 2020 passed by the Ld. ACMM (I), Rouse Avenue Courts, Delhi in Ct. Cas. No. 04/2020 be set aside by this Court.

20. *Per Contra*, Mr. Amit Mahajan, learned CGSC appearing for the Respondents submitted that the issue which arises for consideration of this Hon'ble Court is whether a sanction under Section 196 of the Code is necessary prior for any direction being issued by Ld. ACMM for registration of FIR under Section 156(3) of CrPC.

21. It is submitted that a bare perusal of Section 196 of the Code would show that no court can take cognizance of any offence punishable under Chapter VI or under Section 153A, 295A or sub-section (1) of Section 505 of IPC without previous sanction of the Central Government or the State Government as the case may be. Similarly, Section 197 provides that when any person who is or was a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction. In the present case also, the allegations have been levelled under various Sections including Section 295-A, 153-A and Section 505 of the IPC.

22. It is further submitted that the petitioner has argued that the sanction is only required when the court takes cognizance after filing of a chargesheet and for the purpose of giving directions for investigation

under Section 156(3) of CrPC, no such sanction is required. This issue is no longer *res integra*.

23. The Hon'ble Supreme Court in the case of ***Anil Kumar (supra)*** and ***L. Narayana Swamy v. State of Karnataka & Ors*** **(2016) 9 SCC 598** have specifically held that the court cannot direct registration of FIR or investigation into an offence while exercising power under Section 156(3) of CrPC in relation to offence where the sanction is required to be taken before a court can take cognizance.

24. It is further submitted that a perusal of the status report of the respondent would reveal that on the basis of the allegations levelled by the Petitioners, the respondents came to the conclusion that prima-facie no cognizable offence was found to be committed. It is submitted that once the investigation agency comes to the conclusion that no offence had been made out, the Magistrate has to apply his mind to direct the registration of FIR, however, in such cases want of sanction is mandatory and once it is noticed that there was no previous sanction, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) CrPC.

25. In view of the above submissions, it is submitted that the instant petition is devoid of merits and this Court may be pleased to dismiss the present petition.

26. Heard learned counsels appearing on behalf of parties at length and perused the record.

QUESTION FOR ADJUDICATION

27. A mere perusal of the impugned order makes it evident that the ACMM has not entered into the merits of the case and has decided the complaint before it on the ground of jurisdiction, on the point that he lacked the jurisdiction to entertain the complaint on merits because of want of sanction from the Competent authority to prosecute the two named individuals.

28. Thus, the only question for consideration before this Court is limited to the extent of adjudicating whether the ACMM has rightly dismissed the said complaint.

ANALYSIS

29. In the instant case, the concerned Court in its impugned order dismissed the Petitioners' Application under Section 156(3) of the Code seeking investigation/registration of FIR, finding that the application was not tenable in the eyes of law on the ground that there was no previous sanction obtained by the petitioners from the competent authority to prosecute the named individuals for the offences alleged in the complaint.

30. For a better appreciation of the case at hand, it is pertinent to peruse and analyse the provisions of law invoked in the instant petition before delving deeper into the facts of the case.

Scheme of the Code for Initiation of Criminal Proceedings

31. Section 154 of the Code reads as under:

> ***154. Information in cognizable cases***.— *(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:*
>
> > *Provided that if the information is given by the woman against whom an offence under Section 326-A, Section 326-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB, Section 376-E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:*
> >
> > *Provided further that—*
> >
> > > *(a) in the event that the person against whom an offence under Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB, Section 376-E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such*

information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5-A) of Section 164 as soon as possible.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

32. Section 154 although does not mention the phrase "First Information Report", it pertains to the registration of First Information Report. It provides that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in

writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as prescribed by the State Government.

33. As held in the case of ***Hasib v. State of Bihar,*** **(1972) 4 SCC 773,** the object and scope of the first information report from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party.

34. The only condition precedent for registering an FIR is that the information should disclose a cognizable offence. The requirement of Section 154 of the Code is only that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action.

35. In Section 154(1) of the Code, the Parliament in its wisdom has used the expression 'information' without qualifying the same as was done in Section 41(1)(a) or (g) of the Code wherein the expressions, 'reasonable complaint' and 'credible information' are used. Evidently, the non-qualification of the word 'information' in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code can be interpreted to be existing for the reason that the Police Officer ought not to refuse to record an information/register a case relating to the commission of a cognizable offence on the ground of him not being satisfied with the reasonableness or credibility of the information. Thus, it is evident that 'reasonableness'

or 'credibility' of the said information is not a condition precedent for registration of a case.

36. A Constitution Bench of the Hon'ble Supreme Court in ***Lalita Kumari v. Govt. of U.P.,*** **(2014) 2 SCC 1** held that registration of First Information Report is mandatory under Section 154 of the CrPC, if the information discloses commission of a cognizable offence. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether a cognizable offence is disclosed or not.

37. At this stage it is enough if the Police Officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, based on the information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information.

38. The legislative intent is thus unambiguous - to ensure that every cognizable offence is promptly investigated in accordance with law. Having stated so, there is no reason that there should be any discretion or option left with the police to register or not to register an FIR when information is given about the commission of a cognizable offence. Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 of the Code about the

commission of a cognizable offence must be registered as an FIR so as to initiate an offence.

39. Now, the next question that flows from the aforesaid discussion is what options are available upon a refusal of lodging of FIR by the police.

Remedies for Refusal to Lodge an FIR & Scope of 156(3)

40. Section 154 (3) in itself provides the recourse. Any person aggrieved by a refusal on the part of an officer in charge of a police station to lodge the FIR may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

41. The insertion of sub-section (3) of Section 154, by an amendment, reveals the intention of the Legislature to ensure that no information of commission of a cognizable offence must be ignored or not acted upon.

42. In the landmark case of ***Sakiri Vasu v. State of U.P.*, (2008) 2 SCC 409**, the Hon'ble Supreme Court held as under:

> ***26.*** *If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred*

to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. *As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.*

28. *It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."*

43. After exhausting the steps mentioned in Section 154(1) and Section 154(3) the aggrieved person can file a complaint before the Magistrate for a direction under Section 156(3) to police to register FIR.

*"**156. Police officer's power to investigate cognizable case**.— (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of*

such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned."

44. Section 156(3) unambiguously states that any Magistrate empowered under Section 190 may order an investigation into a cognizable offence. However, the Magistrate cannot act as a mere 'Post Office' in forwarding such a complaint for investigation, meaning thereby that the direction by the Magistrate for investigation under S.156(3) should not be issued as a matter of routine or passed in a mechanical manner, without application of judicial mind.

45. While expounding the nature of power exercised by the Magistrate under Section 156(3) of the Code, a three-Judge Bench of the Hon'ble Supreme Court in ***Devarapalli Lakshminarayana Reddy* v. *V. Narayana Reddy*** **(1976) 3 SCC 252**, held as under:

"17. ... It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173."

46. The Hon'ble Supreme Court in the case of ***Dilawar Singh* v. *State of Delhi* (2007) 12 SCC 641** ruled as under:

> *"18. ...'11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.' [Ed. : See Mohd. Yousuf v. Afaq Jahan, (2006) 1 SCC 627, SCC p. 631, para 11 : (2006) 1 SCC (Cri) 460.] "*

47. In ***CREF Finance Ltd.* v. *Shree Shanthi Homes (P) Ltd.* (2005) 7 SCC 467**, the Hon'ble Supreme Court while dealing with the power of the Magistrate taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure.

48. Subsequently, in the case of ***Madhao* v. *State of Maharashtra,* (2013) 5 SCC 615**, the Hon'ble Supreme Court held:

*"18. When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3)." [**Ed.** : See also Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252 : 1976 SCC (Cri) 380, SCC p. 257, paras 13-14.]*

49. The Hon'ble Supreme Court in ***Priyanka Srivastava v. State of U.P.,*** **(2015) 6 SCC 287** held as under:

"29. *At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same."*

50. It was also held that in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. The Hon'ble Supreme Court went on to held as under:

> *"**30.** In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.*
>
> ***31.** We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases*

pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

51. In the case of ***Ramdev Food Products (P) Ltd.* v. *State of Gujarat* (2015) 6 SCC 439**, while dealing with the exercise of power under Section 156(3) by the Magistrate, a three-Judge Bench has held that:

"22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine 'existence of sufficient ground to proceed'."

52. Another question that arises is the scope of the powers of the magistrate under Section 156(3). In the case of ***Anil Kumar* v. *M.K. Aiyappa* (2013) 10 SCC 705**, the Hon'ble Supreme Court held:

"11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court

in Maksud Saiyed [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

53. In the case of ***Vinubhai Haribhai Malaviya v. State of Gujarat,* (2019) 17 SCC 1**, it was held that the scope of Magistrate's power under Section 156(3) is very wide. Under Section 156(3), by virtue of Article 21 of the Constitution, all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation in the matter in the sense of a fair and just investigation by the police. The said power includes ordering of further investigation after submission of police report under Section 173(2) CrPC. Exercise of that power is available even at post-cognizance stage until trial commences i.e. charges are framed. This power can also be exercised *suo motu* by the Magistrate himself, depending on the facts of each case.

54. When the information is laid with the police, but no action in that behalf is taken, then the complainant has another option to his recourse – under Section 190 read with Section 200 of the Code, to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate, after recording evidence, finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and could issue process to the accused.

55. In Section 156 (3), the word used is “may”. The use of the word "shall" in Section 154(3) and the use of word “may” in Section 156 (3) clearly lays down the intention of the legislation. Had the legislature intended to mandate and close options for the Magistrate, they could have used the word “shall” as has been done in S.154(3). Instead, they chose to use the word “may”. This is significant, and gives a very clear indication, that the Magistrate has the discretion in the matter, and can, in appropriate cases, refuse to order registration.

56. Magistrate may direct the police to register a case and investigate or he may treat the same as a complaint and proceed in matter contemplated in Chapter XV of Code. He should apply his judicial mind.

Magistrate if takes cognizance, may proceed to follow the procedure provided in Chapter XV of Code. Magistrate may either take cognizance under S.190 or may forward the complaint to police under S.156(3) for investigation.

57. In the case of ***Sukhwasi v. State of Uttar Pradesh*, 2007 SCC OnLine ALL 1088**, the Allahabad HC held that the Magistrate is not bound to order for registration of an FIR in all cases where a cognizable offence has been disclosed and the Magistrate has authority to treat it as a complaint.

58. Having dealt with the scheme of the Code, and before dealing with the correctness of the Order of the Magistrate, since the speeches in question were allegedly hate speeches, it is pertinent to refer to the law against hate speech.

Law regarding Hate Speech

59. Hate speeches incite violence and feelings of resentment against members of specific communities, thereby causing fear and feeling of insecurity in the minds of the members of those communities. In fact, it marginalizes individuals based on their membership in a group by using expressions that expose the group to hatred. Hate speeches are almost invariably targeted towards a community to impart a psychological impact on their psyche, creating fear in the process. Hate speeches are the beginning point of attacks against the targeted community that can range from discrimination to ostracism, ghettoization, deportation, and, even to genocide.

60. The methodology is not restricted to any religion or community in specific. There have been and there continue to be instances of hate speeches in different parts of the country targeted against people of specific communities, based upon the demographic composition. There have even been instances of demographic shifts in the aftermath of such Hate/Inflammatory speeches, the exodus of Kashmiri Pandits from the Kashmir valley is a prime example.

61. Article 19 of the Indian Constitution provides for freedom of speech and expression with reasonable restrictions and the same is not an absolute right. The reasonable restrictions include public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Hate speeches not only cause defamation but also incite offences against a particular sect of religion of this nation.

62. Black's Law Dictionary, 9th Edition defines the expression 'hate speech' as under:

> *"Speech that carries no meaning other than the expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is likely to provoke violence."*

63. Article 7 of the Universal Declaration of Human Rights (UDHR) as adopted by General Assembly provides that everyone is equal and entitled to equal protection against discrimination, and against incitement to such discrimination.

64. Further, the International Covenant on Civil & Political Rights, 1966 (ICCPR), which India ratified in 1992 places positive obligations to limit speech on governments. Article 20(2) of the ICCPR states that "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." In other words, Article 20(2) requires the signatory governments to prohibit "hate speech."

65. Similarly, Articles 4 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD) prohibits the elements of hate speech and mandates the member states to make a law prohibiting any kind of hate speech through a suitable framework of law.

66. The Courts of the United Kingdom and Canada have recognized a 'duty of care' by the police as a component of both private and public law.

67. In ***Robinson v West Yorkshire Police*** **[2018] UKSC 4** at Paragraph 69, speaking for the majority, Lord Reed stated that:

> *"(1) I do not suggest that the discussion of policy considerations in cases such as Hill, Brooks and Smith should be consigned to history. But it is important to understand that such discussions are not a routine aspect of deciding cases in the law of negligence, and are unnecessary when existing principles provide a clear basis for the decision, as in the present appeal. I would not agree with Lord Hughes's statement that they are the ultimate reason why there is no duty of care towards victims, suspects or witnesses imposed on police*

officers engaged in the investigation and prevention of crime. The absence of a duty towards victims of crime, for example, does not depend merely on a policy devised by a recent generation of judges in relation to policing: it is based on the application of a general and long-established principle that the common law imposes no liability to protect persons against harm caused by third parties, in the absence of a recognised exception such as a voluntary assumption of responsibility.[...]

(4) The distinction between careless acts causing personal injury, for which the law generally imposes liability, and careless omissions to prevent acts (by other agencies) causing personal injury, for which the common law generally imposes no liability, is not a mere alternative to policy-based reasoning, but is inherent in the nature of the tort of negligence. For the same reason, although the distinction, like any other distinction, can be difficult to draw in borderline cases, it is of fundamental importance. The central point is that the law of negligence generally imposes duties not to cause harm to other people or their property: it does not generally impose duties to provide them with benefits (including the prevention of harm caused by other agencies). Duties to provide benefits are, in general, voluntarily undertaken rather than being imposed by the common law, and are typically within the domain of contract, promises and trusts rather than tort. It follows from that basic characteristic of the law of negligence that liability is generally imposed for causing harm rather than for failing to prevent harm caused by other people or by natural causes. It is also consistent with that characteristic that the exceptions to the general non-imposition of liability for omissions include situations where there has been a voluntary assumption of responsibility to prevent harm (situations which have sometimes been described as being close or akin to contract), situations where a person has assumed a status which carries with it a responsibility to prevent harm, such as being a parent or standing in loco parentis, and situations where the omission arises in the context of the defendant's having acted so as to create or increase a risk of harm".

68. The Supreme Court of Canada in ***Saskatchewan (Human Rights Commission) v. Whatcott 2013 SCC 11***, succeeded in bringing out the "human rights" obligations leading to control on publication of "hate speeches" for protection of human rights defining the expression "hate speech" observing that the definition of "hatred" set out in ***Canada (Human Rights Commission) v. Taylor, (1990) 3 SCR 892***, with some modifications, provides a workable approach to interpreting the word "hatred" as is used in legislative provisions prohibiting hate speech. Three main prescriptions must be followed. *First*, courts must apply the hate speech prohibition objectively. The question courts must ask is whether a reasonable person, aware of the context and circumstances, would view the expression as exposing the protected group to hatred. *Second*, the legislative term "hatred" or "hatred or contempt" must be interpreted as being restricted to those extreme manifestations of the emotion described by the words "detestation" and "vilification". This filters out expression which, while repugnant and offensive, does not incite the level of abhorrence, delegitimization and rejection that risks causing discrimination or other harmful effects. *Third*, the Courts must focus their analysis on the effect of the expression at issue, namely – whether it is likely to expose the targeted person or group to hatred by others. The repugnancy of the ideas being expressed is not sufficient to justify restricting the expression, and whether or not the author of the expression intended to incite hatred or discriminatory treatment is irrelevant. The key is to determine the likely effect of the expression on its audience, keeping in mind the legislative objectives to reduce or eliminate discrimination.

69. Referring back to the Indian position as laid down by the Courts, in ***Ramesh v. Union of India***, **AIR 1988 SC 775**, while dealing with the subject, the Hon'ble Supreme 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."*

70. Article 15 of the Constitution of India provides for prohibition of discrimination against any citizen on grounds of only of religion, race, caste, sex, or place of birth or any of them. The Hon'ble Supreme Court on numerous instances has reiterated the same, in ***Zahira Habibulla H. Sheikh v. State of Gujarat*** **(2004) 4 SCC 158**, this Hon'ble Court held that:

> *"65. In a country like ours with heterogeneous religions and multiracial and multilingual society which necessitates protection against discrimination on the ground of caste or religion taking lives of persons belonging to one or the other religion is bound to have dangerous repercussions and reactive effect on the society at large and may tend to encourage fissiparous elements to undermine the unity and security of the nation on account of internal disturbances. It strikes at the very root of an orderly society, which the founding fathers of our Constitution dreamt of.*
>
> *66. When the ghastly killings take place in the land of Mahatma Gandhi, it raises a very pertinent question as to whether some people have become so bankrupt in their ideology that they have deviated from everything which was so dear to him. When a large number of people including innocent and helpless children and women are killed in a diabolic manner it brings*

disgrace to the entire society. Criminals have no religion. No religion teaches violence and cruelty-based religion is no religion at all, but a mere cloak to usurp power by fanning ill feeling and playing on feelings aroused thereby. The golden thread passing through every religion is love and compassion. The fanatics who spread violence in the name of religion are worse than terrorists and more dangerous than an alien enemy."

71. The Hon'ble Supreme Court has recognized 'hate speech' as being violative of constitutional guarantees under Article 14, 15 and 21. In the case of ***Pravasi Bhalai Sangathan v. Union of India (2014) 11 SCC 477,*** at Paragraph 8, it has been held that it is the idea of discrimination that lies at the heart of hate speech principles. It was held as under:

"8. Hate speech is an effort to marginalise individuals based on their membership in a group. Using expression that exposes the group to hatred, hate speech seeks to delegitimise group members in the eyes of the majority, reducing their social standing and acceptance within society. Hate speech, therefore, rises beyond causing distress to individual group members. It can have a societal impact. Hate speech lays the groundwork for later, broad attacks on 26 vulnerable sections that can range from discrimination, to ostracism, segregation, deportation, violence and, in the most extreme cases, to genocide. Hate speech also impacts a protected group's ability to respond to the substantive idea under debate, thereby placing a serious barrier to their full participation in our democracy."

72. By way of the said judgment, the Hon'ble Supreme Court has specified that laws related to "Hate Speech" must be applied "objectively" and has noted that the problem with laws relating to Hate Speech is rooted in their non-execution.

73. Pursuant to the aforesaid judgment of ***Pravasi Bhalai Sangathan (supra)*** the Law Commission of India reviewed the laws on Hate speech and made recommendations in its 267th Report. Relevant extracts from the same are reproduced hereunder:

> ***"Tests for determining hate speech***
>
> *4.13 Three tests have been adopted by the courts while recognising whether a speech amounts to hate speech or not. Once it has been established that there has been an interference with freedom of expression, the courts resort to a three-fold analysis to determine the legitimacy of such interference:*
>
> > *(a) Is the interference prescribed by law? The law that allows limitation of article 10 of ECHR must be prescribed by the statute and must be precise so that the citizens can regulate their conduct in accordance with the law and foresee the consequences of the impermissible conduct.*
> >
> > *(b) Is the interference proportionate to the legitimate aim pursued? It has been opined by the court in Handyside v. United Kingdom,49 that the restrictions imposed by the State under article 10(2) on freedom of expression must be 'proportionate to the legitimate aim pursued.'*
> >
> > *(c) Is the interference necessary in a democratic society? This test requires a careful examination of the fact to determine whether the freedom was limited in pursuance of a legitimate social need and in order to protect the principles and values underlying ECHR.*
>
> *XXX*

5.3 In order to qualify as hate speech, the speech must be offensive and project the extreme form of emotion. Every offensive statement, however, does not amount to hate speech. The expressions advocacy and discussion of sensitive and unpopular issue have been termed 'low value speech' unqualified for constitutional protection.

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6.2 Incitement to violence cannot be the sole test for determining whether a speech amounts to hate speech or not. Even speech that does not incite violence has the potential of marginalising a certain section of the society or individual. In the age of technology, the anonymity of internet allows a miscreant to easily spread false and offensive ideas. These ideas need not always incite violence but they might perpetuate the discriminatory attitudes prevalent in the society. Thus, incitement to discrimination is also a significant factor that contributes to the identification of hate speech."

74. This Hon'ble Supreme Court in the case of ***Amish Devgan v Union of India 2020 SCC OnLine SC 994,*** has reiterated the continuing obstruction that 'Hate Speech' causes to targeted groups in terms of their participation in social, economic and political life. This Hon'ble Court held as under:

"31.3. ... Hate propaganda argues for a society with subversion of democracy and denial of respect and dignity to individuals based on group identities.

***

108. ... in a polity committed to pluralism, hate speech cannot conceivably contribute in any legitimate way to democracy and, in fact, repudiates the right to equality".

75. In the case of ***Patricia Mukhim v. State of Meghalaya and Ors.***, in Criminal Appeal No. 141 of 2021, dated 25th March 2021, the Hon'ble Supreme Court while referring to its earlier rulings including ***Bilal Ahmed Kaloo v. State of A.P.*** **(1997) 7 SCC 431** and ***Ramesh v. Union of India*** **(1998) 1 SCC 668**, and **Pravasi Bhalai Sangathan v. Union of India & Ors.** ***(supra)***, the Hon'ble Supreme Court held that:

> *"Free speech of citizens of this country cannot be stifled by implicating them in criminal cases, unless such speech as the tendency to affect public order."*

76. Therefore, before initiating criminal proceedings for what one thinks it to be hate speech, the words of the Hon'ble Supreme Court must be taken into consideration.

77. In India, the constitutionality of hate speech restrictions has been upheld in the interest of 'public order' in as much as it continues to be punishable under the Indian Penal Code, 1860 as well as other laws and statutes in force, an illustrative list of which is provided hereunder:

Statute	***Provisions***
Indian Penal Code, 1860	Sections 124A, 153A, 153B, 295-A, 298, 505(1), 505(2)
The Representation of People Act, 1951	Sections 8, 123 (3A), 125

Information Technology Act, 2000 & Information Technology (Intermediaries guidelines) Rules, 2011	Sections 66A, 69, 69A Rule 3(2)(b), Rule 3(2)(i)
Code of Criminal Procedure, 1973	Sections 95, 107, 144, 151, 160
Unlawful Activities (Prevention) Act, 1967	Sections 2(f), 10, 11, 12
Protection of Civil Rights Act, 1955	Section 7
Religious Institutions (Prevention of Misuse) Act, 1980	Sections 3 and 6
The Cable Television Networks (Regulation) Act, 1995 and The Cable Television Network (Rules), 1994	Sections 5,6,11,12,16, 17, 19, 20 & Rules 6 & 7
The Cinematographers Act, 1952	Sections 4, 5B, 7

78. The statutory provisions and particularly the penal law provide sufficient remedy to curb the menace of "hate speeches". The executive

as well as civil society has to perform its role in enforcing the already existing legal regime.

79. Effective regulation of "hate speeches" at all levels is required and all the law enforcing agencies must ensure that the existing law is not rendered a dead letter. Enforcement of the aforesaid provisions is required being in consonance with the proposition "*salus reipublicae suprema lex*" (safety of the state is the supreme law).

Section 196 of the Code and Requirement of Sanction

80. Before delving into the question regarding the requirement of sanction under Section 196 and the stage at which such a sanction is required to be seen, it is pertinent that the provision be perused and analysed.

81. Section 196 of the Code reads as under:

> *"**196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.—***
>
> *(1) No Court shall take cognizance of—*
>
> *(a) any offence punishable under Chapter VI or under Section 153-A, Section 295-A or sub-section (1) of Section 505 of the Indian Penal Code, 1860 (45 of 1860), or*
>
> *(b) a criminal conspiracy to commit such offence, or*
>
> *(c) any such abetment, as is described in Section 108-A of the Indian Penal Code (45 of 1860),*

except with the previous sanction of the Central Government or of the State Government.

(1-A) No Court shall take cognizance of—

> *(a) any offence punishable under Section 153-B or sub-section (2) or sub-section (3) of Section 505 of the Indian Penal Code, 1860 (45 of 1860), or*
>
> *(b) a criminal conspiracy to commit such offence,*

except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.

(2) No court shall take cognizance of the offence of any criminal conspiracy punishable under Section 120-B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of Section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction under sub-section (1) or sub-section (1-A) and the District Magistrate may, before according sanction under sub-section (1-A) and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of Section 155."

82. Upon studying the aforesaid provision one can unambiguously infer that no court can take cognizance of any offence punishable under Chapter VI or under Section 153A, 295A or sub-section (1) of Section 505 of IPC without previous sanction of the Central Government or the State Government as the case may be. Similarly, Section 197 provides that when any person who is or was a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction. In the instant case, the allegations have been levelled under various Sections including Section 295-A, 153-A and Section 505 of the IPC, all of which require prior sanction for prosecution under Section 196 of the Code.

83. For deciding the question as to at what stage the requirement of sanction is to be seen, it is pertinent to refer to the decided case laws relied upon by the parties.

84. In the case of ***Anil Kumar v. M.K. Aiyappa*, (2013) 10 SCC 705,** it was held as under:

> *"11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [(2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section*

156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.

13. The expression "cognizance" which appears in Section 197 CrPC came up for consideration before a three-Judge Bench of this Court in State of U.P. v. Paras Nath Singh [(2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200] , and this Court expressed the following view: (SCC pp. 375, para 6)

> *"6. ... '10. ... And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the*

words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.' [Ed.: As observed in State of H.P. v. M.P. Gupta, (2004) 2 SCC 349, 358, para 10 : 2004 SCC (Cri) 539.] "

85. Further, the Hon'ble Supreme Court in ***Army Headquarters* v. *CBI*** **(2012) 6 SCC 228** opined as follows:

"82. Thus, in view of the above, the law on the issue of sanction can be summarised to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him.

83. If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab initio…."

86. In the case of ***L. Narayana Swamy v. State of Karnataka*, (2016) 9 SCC 598**, it was held as under:

"12. As is clear from the plain language of the said section, the court is precluded from taking "cognizance" of an offence under certain sections mentioned in this provision if the prosecution is against the public servant, unless previous sanction of the Government (Central or State, as the case may be) has been obtained. What is relevant for our purposes is that this section bars taking cognizance of an offence. The question is whether it will cover within its sweep, order directing investigation under Section 156(3) CrPC? The High Court has taken the view, in the impugned judgment [Shashidhar v. State of Karnataka, 2014 SCC OnLine Kar 12287], that bar is from taking cognizance which would not apply at the stage of investigation by the investigating officer. It is observed that sanction is required only after investigation and that too when, after investigation, it is found that there is substantial truth in the investigation report as to what amounts to cognizance of offence."

87. In the same judgment, it was further held as under:

"14. In State of W.B. v. Mohd. Khalid [State of W.B. v. Mohd. Khalid, (1995) 1 SCC 684 : 1995 SCC (Cri) 266] , this Court has observed as follows:

> *'13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out.' [Ed.: As considered in State of Karnataka v. Pastor P. Raju, (2006) 6 SCC 728, 734, para 13 : (2006) 3 SCC (Cri) 179]*

The meaning of the said expression was also considered by this Court in Subramanian Swamy case [Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] .

15. The judgments referred to hereinabove clearly indicate that the word "cognizance" has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) CrPC, obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 CrPC and the next step to be taken is to follow up under Section 202 CrPC. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage.

***

21. The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) CrPC. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh [State of U.P. v. Paras Nath Singh, (2009) 6 SCC 372 :

(2009) 2 SCC (L&S) 200] and Subramanian Swamy [Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] cases."

Having regard to the ratio of the aforesaid judgment [Anil Kumar v. M.K. Aiyappa, (2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] , we have no hesitation in answering the questions of law, as formulated in para 10 above, in the negative. In other words, we hold that an order directing further investigation under Section 156(3) CrPC cannot be passed in the absence of valid sanction."

88. The term "cognizance" has not been defined anywhere in the Code. Its origin can be traced to the Old French root "*conoisance*", as well as to the Latin word *"cognoscere".* The word has been defined in Black's Law Dictionary, 8th Edition as follows:

"Cognizance-

(1) A court's right and power to try and to determine cases; Jurisdiction,

(2) The taking of judicial or authoritative notice.

(3) Acknowledgement or admission of an alleged fact.

(4) Common Law Pleading. In a replevin action, a plea by the defendant that the goods are held in bailment for another."

89. The Advanced Law Lexicon by P. Ramanatha Aiyar defines 'Cognizance' in the following manner:

> *"Cognizance. - Judicial notice or knowledge; the judicial recognition or hearing of a cause; jurisdiction, or right to try and determine causes. It is a word of the largest import: embracing all power, authority and jurisdiction. The word "cognizance" is used in the sense of "right to take notice of and determine a cause." Taking cognizance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind of the suspected commission of an offence...."*

90. The Hon'ble Supreme Court in the case of ***State of Himachal Pradesh v. M.P. Gupta,*** **(2004) 2 SCC 349**, had the occasion to consider the expression 'Cognizance'. In paragraph 10 of the judgment, following was stated:

> *"10. ... According to Black's Law Dictionary the word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is Accused of an offence alleged to have been committed during discharge of his official duty."*

91. Taking cognizance by the court only means that the court has taken note of the offence which has been alleged against the accused persons. The judgments referred to hereinabove clearly indicate that the word "cognizance" has a wider connotation and is not merely confined to the stage of taking cognizance of the offence.

92. It is well settled law that the court while exercising power under Section 156(3) of CrPC is required to apply its mind before any order for registration of FIR can be passed.

93. Furthermore, an additional layer of scrutiny *albeit* discretionary has been provided under Section 196(3) which says that the Government before granting such sanction may order a preliminary investigation by a police officer not below the rank of police officer. Such safeguard has neither been envisioned nor been provided for under Section 197.

94. Therefore, the legislative intent behind the provision was crystal clear that the offences mentioned under Section 196 should not be ordered to be investigated in a routine manner. If such investigations are ordered in routine manner for the offences under Section 295-A, 153-A and Section 505, that would lead to a situation where thousands of FIRs would be registered to settle scores against political opponents across the country. This would not only be undesirable and an abuse of process but would also result in choking of the already overburdened criminal justice machinery.

95. Thus, the Legislature, being wary of such a situation, in its wisdom has incorporated this two-tier mechanism, firstly, in the form of a sanction and secondly, in the form of a preliminary investigation before granting any sanction.

96. The learned counsel for the petitioner has argued that the sanction is only required when the court takes cognizance after filing of a chargesheet and for the purpose of giving directions for investigation under Section 156(3) of CrPC, no such sanction is required. This issue is, however, no longer *res integra*. The Hon'ble Supreme Court in the case of ***Anil Kumar (supra)*** and ***L. Narayana Swamy v. State of Karnataka &***

***Ors.* (2016) 9 SCC 598** has specifically held that the court cannot direct registration of FIR or investigation into an offence while exercising power under Section 156(3) of Code in relation to offence where the sanction is required to be taken before a court can take cognizance.

Limitations of Writ Jurisdiction

97. In order to appreciate the case at hand, it is pertinent to refer to the position of law laid down as to the exercise of the writ jurisdiction by the High Court.

98. In the landmark case of ***Whirlpool Corporation. v. Registrar of Trade Marks* (1998) 8 SCC 1**, the Hon'ble Supreme Court had held as follows: -

> *"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."*

99. Another ancillary question that is - can a person straightaway approach the High Court against the refusal of police to register an FIR? The same stands answered by the Hon'ble Supreme Court in the case of ***Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage*, 2016 (6) SCC**

277. It was held that if a person has a grievance that the police have not registered his complaint, or having registered it, they have not investigated it properly, then the aggrieved person's remedy is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) of the Code. The Hon'ble Court held as under:

> ***"2.*** *This Court has held in* ***Sakiri Vasu v. State of U.P. [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440 : AIR 2008 SC 907****] , that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in* ***Sakiri Vasu case [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440 : AIR 2008 SC 907]*** *because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.*
>
> ***3.*** *We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied,*

registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation."

100. A Division Bench of the Allahabad High Court while deciding the case of ***Waseem Haider v. State of U. P. Through Principal Secretary Home, Lucknow and Ors.*** Misc. Bench No. 24492 of 2020, decided on 14th December 2020, was of the opinion that the power to issue a writ of mandamus has its own well defined self-imposed limitations, one of which is the availability of alternative efficacious remedy. In the aforesaid judgment, the Division Bench has exhaustively dealt with the alternative remedies available to a person aggrieved by non-registration of FIR by the police. The Bench *inter alia* held that:

"The writ remedy is extra-ordinary remedy and equitable remedy. Further, the writ Court need not entertain a writ petition merely because a case is made out of alleged inaction or negligent in acting on an issue by an authority vested with power, in these cases to register crime/to complete investigation into crime, if statutorily engrafted remedy is available to seek redress on such grievance. Even if, a case is made out on alleged illegal action by statutory authority, which require redressal, ordinarily writ Court does not entertain the writ petition if the aggrieved person has not availed other remedies, more so, such remedies are incorporated in a statute."

101. While explaining the remedies available under the Code, the Court also observed:

"Code of Criminal Procedure incorporates enough safeguards to victims and accused. It lays down detailed procedure in conducting investigation, filing of final report, taking of cognizance, conducting of trial. It provides enough safeguards

against illegal action of police. It is a self contained code and comprehensive on all aspects of criminal law. A complainant has statutorily engrafted remedies to ensure that his complaint is taken to its logical end. Thus, he must first exhaust said remedies and cannot invoke extra-ordinary writ remedy as a matter of course, even when crime is not registered and there is no progress in the investigation."

102. In the case of ***Radha Krishan Industries v. State of Himachal Pradesh*** **2021 SCC OnLine SC 334**, the Hon'ble Supreme Court has reiterated and summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. The Hon'ble Supreme Court has observed:

"28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily,

a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

103. While deciding the case of ***Assistant Commissioner of State Tax v. Commercial Steel Limited,*** **2021 SCC OnLine SC 884**, a 3-judge bench of the Hon'ble Supreme Court held as under:

"11. ... The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

(i) *a breach of fundamental rights;*

(ii) *a violation of the principles of natural justice;*

(iii) *an excess of jurisdiction; or*

(iv) *a challenge to the vires of the statute or delegated legislation.*

12. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of

natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition."

104. Recently, while deciding the case of ***Kotak Mahindra Bank Limited v Dilip Bhosale,*** **[2022 LiveLaw (SC) 545] SLP (C) 13241 of 2019,** the Hon'ble Supreme Court reiterated that when a remedy under the statute is available, filing of a writ petition under Article 226 of the Constitution is to be discouraged by the High Court. It was held as under:

"Before parting with the order, we would like to observe that this Court is consistent of the view and can be noticed from the judgment in ***United Bank of India vs. Satyawati Tandon & Ors. (2010) 8 SCC 110****, that when a remedy under the statute is available and in the instant case which indeed was availed by the respondent/borrower, filing of a writ petition under Article 226 of the Constitution is to be discouraged by the High Court."*

105. The principle that emerges from the aforementioned judgments is that the extraordinary writ jurisdiction is to be exercised only in rare cases or certain contingencies in the interest of justice, including the exceptional cases delineated above.

106. Thus, a writ to compel the police to conduct an investigation or lodge an FIR can be denied for not exhausting the alternative and efficacious remedy available under the provisions of the Code, unless the exceptions enumerated in the decision of the Hon'ble Supreme Court in the aforementioned judgment are satisfied. In the instant case, the petitioner is yet to exercise and exhaust his alternative remedies available

under the provisions of the Code including challenging the impugned order of the Magistrate.

107. In light of the aforesaid, it is settled law that the power to issue writ has its own well-defined limitations imposed by the High Courts, one of which is the availability of alternative efficacious remedy. Considering the law laid down by the judicial precedents, the procedure laid down by the Code of Criminal Procedure and as well as the fact that alternate and efficacious remedy is available to the petitioner which is yet to be exhausted, this Court is also of the opinion that the High Court should not ordinarily, as a matter of routine, exercise its extraordinary writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available.

108. Before applying the jurisprudence delineated above to the facts of the instant case, it is pertinent to take note of a worrying phenomenon that has gained traction and is in vogue these days is of bypassing the procedure under the Code. The beauty of procedural law lies in the stages and remedies available during the course of a criminal proceeding. The High Courts have been flooded with writ petitions praying for registration of FIRs or praying for a proper investigation. If the High Courts entertain such writ petitions, it will open pandora's box and would crumble the already overtaxed system. Therefore, the alternate remedies wherever available must be exhausted, save in exceptional circumstances where the urgent intervention of this Court is required in the interest of justice, before approaching this Court.

109. In the instant case, the petitioner also seems to have adopted a similar attitude. As per the petition, the petitioners on 29th January 2020 made a complaint against Mr. Anurag Thakur and Mr. Parvesh Verma to the Commissioner of Police, Delhi asking for registration of FIR against the two directly, without approaching the SHO. In furtherance of the said complaint, on 31st January 2020, another letter was addressed to the Commissioner stating therein that because of inaction of police over their complaint has led to an incident wherein, according to the letter, an armed man shot at protesting students.

110. It was only on 2nd February 2020, the petitioners, by way of a letter addressed to the SHO, Parliament Street Police Station, New Delhi, made a request to immediately file FIRs against Mr. Anurag Thakur and Mr. Parvesh Verma, enclosing therein the two aforementioned representations made earlier to the Commissioner. And within three days of the said letter, on 5th February 2020, the Petitioners filed an Application under Section 156(3) of the Code seeking registration of FIR before the ACMM. Again, upon a dismissal of the said complaint, the petitioners had the alternate remedy to approach the revisional court against the impugned Order rather than approaching this Court directly by way of a writ petition.

111. Therefore, this Court holds that the instant petition despite being maintainable, does not warrant the exercise of writ jurisdiction by this Court since, *first*, no rights, whether fundamental or legal, of the petitioners stands violated which would have otherwise required the intervention of this Court, in so far as the right to report a cognizable

offence is concerned. *Second*, there is no gross illegality committed in the entire proceedings before the Court below. Section 156(3) remedy had been availed of wherein the ACMM after having taken note of the Status Report filed by the Investigating Agency and applying its judicial mind to the complaint dismissed the same. *Third*, as discussed in the foregoing paragraphs, the petitioners have failed to follow the prescribed mechanism under the Code.

Analysis of the Impugned Order

112. This Court shall now test the validity of the impugned Order passed by the ACMM. The petitioners had approached the ACMM under Section 156(3) of the Code seeking order of registration of FIR against the two named persons for the alleged offences.

113. Under the scheme of Section 156(3) of the Code, on the first date of the proceedings, ATR was called from the DCP District New Delhi. Subsequently, as per the record of the proceedings of the Court below, on 11th February 2020, ATR was filed by the Special Investigation Unit of Crime Branch and was taken on record. On the said date, the Crime Branch was directed to expedite the preliminary inquiry and file the detailed ATR in next 15 days.

114. In the proceedings dated 26th February 2020, the status report was filed by the investigating agency, wherein it was recorded that on the basis of allegations levelled in the complaint, *prima facie* no cognizable offence was found to be committed. The Copy of the Status Report was supplied to the other side and arguments were heard.

115. On 2nd March 2020, the Court of ACMM was informed that a WP (CRL) 565/2020 titled as "Harsh Mander and Another v. GNCTD and Others" was pending before this High Court containing the same averments and seeking the same relief as was being made in the petitioners' application. In view of the fact that the High Court was already seized of the matter and had listed the matter for 13th April 2020 giving the opportunity to the Union of India for filing its response, the ACMM chose not to pass any order in the application till the outcome of the said writ petition.

116. Finally, on 26th August 2020, the ACMM-I dismissed the Petitioners' Application under Section 156(3) of the Code, recording the finding that the application was not tenable in the eyes of law on the ground that there was no previous sanction obtained by the complainants/petitioners from the competent authority to prosecute the named individuals for the offences alleged in the complaint.

117. Before analysing the validity of the impugned Order, it is pertinent to peruse the findings of the Status Report filed by the Investigating Agency, which was considered by the ACMM. The contents of the said Status Report are paraphrased hereunder:

a. Regarding the allegations against Mr. Thakur, it is stated that the connotation/meaning of the word "*gaddar*" is traitor, and as such does not target or refer to any specific community. Thus, it does not amount to commission of any cognizable offence as alleged by the complainants.

b. *Qua* the allegations regarding Mr. Verma, it is stated that the speaker has only stated his position on the erstwhile protest ongoing in Shaheen Bagh, and not any specific community or its members. It is further recorded by the agency that no provocation whatsoever has been made instigating the crowd to riot or for taking any retaliatory action against the protestors.

c. Regarding other allegations of incidents of violence being inspired by the speeches of the two leaders, it has been recorded in the Status Report that *first,* separate FIRs had been lodged against the accused in those cases, *second,* the cases had been referred to Crime Branch for further investigation, *third*, none of the accused as alleged of having committed the acts of violence had attributed their actions to either of the speeches made, and *fourth,* there was no connection whatsoever to the speeches in question and the acts of violence.

In light of the aforesaid, it has been recorded in the Status Report that on the basis of allegation levelled in the complaint, *prima facie* no cognizable offence has been found to be committed.

118. Every institution in this country has a purpose to serve in a democratic and constitutional framework governed by the rule of law. The mandate of investigative agency such as the police is *sui generis.* It performs a key function to investigate the cases of crime, to detect and

collect crucial evidence that would assist the Courts of law in imparting justice. Therefore, the opinion/findings of the agency merit its own significance and despite the same being contestable and justiciable in a Court, it cannot be *prima facie* discarded or brushed aside without application of judicial mind.

119. On a perusal of the said report, it is evident that upon applying its mind to the facts as alleged in the complaint, the Investigating Agency in the present case has filed the status report specifically stating that no cognizable offence has been made out.

120. Once the investigating agency upon conducting its preliminary enquiry, has come to the conclusion that *prima facie* no cognizable offence is made out, the ACMM must apply its mind to direct the investigation or for registration of FIR. However, as discussed earlier, for the purpose of ordering any investigation, the ACMM in the instant case would be required to take cognizance of the facts/evidence before it, which is not permissible without there being a valid sanction.

121. Another question that has been contested by the petitioners is that the judgment of ***Anil Kumar (supra)*** is not a good law on the grounds of it being contrary to the settled law regarding Section 156(3) and cognizance; as well as on the ground that the said judgment is *per incuriam.* The petitioners have relied on the judgment of ***Manju Surana v. Sunil Arora and Ors. (supra)***.

122. As held in the case of ***Maharashtra v. Sarva Shramik Sangh (2013) 16 SCC 16***, it is an established principle of law that until a

judgment which has been referred to a larger bench is overruled, the said judgment occupies the field and continues to operate as a good law. This would continue until the larger bench decides the matter reliance is placed.

123. As held in ***Union of India v. S.K. Kapoor, (2011) 4 SCC 589*** at paragraph 9, it is also well settled that if a subsequent coordinate Bench of equal strength wants to take a different view, it can only refer the matter to a larger Bench, otherwise the prior decision of a coordinate Bench is binding on the subsequent Bench of equal strength. Therefore, reliance placed on ***Manju Surana (supra)*** is clearly misplaced.

124. The said view taken by the Hon'ble Supreme Court has recently been applied by the High Court of Calcutta in the case of ***Dr. Nazrul Islam v. Basudeb Banerjee and Ors,*** **2022 SCC Online Cal 183**. It was held as under: -

> *"The subsequent judgment in Manju Surana (supra) case has referred the issue to a Larger Bench but did not declare the ratio laid down in the earlier two judgments as either per incuriam or a bad law. To that extent the submission of the learned Advocate General that an issue which could not be decided subsequently by the Hon'ble Supreme Court cannot be decided by a High Court on the mere asking of the petitioner, cannot be brushed aside. The submission of the learned Advocate General that in case a reference has been made on a point of law then the last of the judgment which is authority on the point would be valid is the correct proposition to be followed by this Court, as was held in M.S. Bhati Vs. National Insurance Company Ltd., (2019) 12 SCC 248; P. Sudhakar Rao & Ors. Vs U. Govinda Rao & Ors. (2013) 8* SCC *693; Ashoke Sadarangani & Anr. Vs. Union of India and Ors., (2012) 11*

SCC 321; Harbhajan Singh & Anr. Vs State of Punjab & Anr., (2009) 13 SCC 608.

Having regard to the subject matter by way of which the petitioner has attempt to invoke the provisions of Section 156(3) of the Code of Criminal Procedure against the public servants this Court is of the opinion that as the provision of Section 197 of the Code of Criminal Procedure has been incorporated in the statute, the same has been for a meaningful purpose of allowing the public servants to discharge their duties without fear or favour or without any anticipation of being harassed because of the rigors of law. Therefore, ordinarily a valid sanction would be required in a proceeding where the provisions of Section 156(3) Cr. P.C. are invoked against public servants. However, in this case substantive offences as alleged have not been made out, so the issue of sanction is an additional consideration."

125. What emerges is that until a judgment which has been referred to a larger bench is overruled, the said judgment occupies the field and continues to operate as a good law. Thus, the said issue of non-applicability of the judgment of ***Anil Kumar (supra)*** stands answered in the aforesaid terms.

126. Further, the ACMM rightly did not comment on the merits of the case while dismissing the application under Section 156(3) of the Code for want of sanction. It is a settled position of law that if the court is dismissing the case on the ground of maintainability, it should refrain from passing any order on the merits of the case.

127. In light of the aforesaid discussion and reasoning, what emerges is *firstly*, that the appropriate sanction of government is required for investigation under Section 196 of the Code. *Secondly*, there is alternative

and efficacious remedy available under the Code that needs to be taken resort of, before invoking the writ jurisdiction of this Court. *Thirdly*, in the instant case, the ACMM has rightly decided the application before it. The provisions of Section 156(3) for directing investigation *qua* offences mentioned in Section 196 of the Code cannot be exercised by the Court without sanction. There is no *prima facie* irregularity that is apparent upon a perusal of the impugned order. *Fourthly*, the petitioners have failed to satisfy the Court and no case is made out warranting the intervention of this Court at this stage.

128. Hence, in light of the foregoing discussion and analysis, there are no cogent reasons to entertain the petition and allow the prayers sought therein. In the aforesaid terms, the petition stands dismissed.

129. Pending applications, if any, also stand disposed of.

130. It is made clear that any observations made herein shall have no bearings whatsoever on the merits of the case during any other proceedings before any other Court.

131. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

June 13, 2022
@j/@dityak.