IMRAN PRATAPGADHI

v.

STATE OF GUJARAT AND ANR

28th March 2025

Supreme Court

Provisions -: section 154 CrPC & 173 BNSS, Lalita Kumari vs State of UP & Ors

Section 196, 197, 302, 299, 57 of BNS

Context- recently the supreme court passed two judgments regarding registration of FIR. Various article has been written of them individually with the headings as –

“ Lalita Kumari judgment doesn’t create absolute rule that preliminary enquiry is necessary in every case before FIR”

Pradeep Nirankaranth Sharma vs State of Gujrat& Ors

17/03/2025

&

“Supreme Court mandates preliminary enquiry before FIR on certain offences related to speech and expression.”

Imran Pratapgadhi vs State of Gujrat

Facts -First Information Report (for short, 'FIR') was registered with Jamnagar Police Station for the offences punishable under Sections 196, 197(1), 302, 299, 57 and 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short, 'the BNS'). In the complaint of the 2nd respondent, he stated that on 29th December 2024, on the occasion of the birthday of one Altaf Ghafarbhai Khafi, a member of the Municipal Corporation of Jamnagar, a mass wedding program was held at Sanjari Education and Charitable Trust. The said Municipal Councillor

invited the present appellant to the function. A video of the event was made. The appellant posted the video on the social media platform 'X' from his verified account. The video has the recitation of the poem reproduced above in the background. The allegation in the complaint is that the spoken words of the poem incite people of one community against another, and it hurts a community's religious and social sentiments. It is alleged that the song had lyrics that incited people of other communities to fight for the community's rights. It is alleged that the video posted by the appellant created enmity between two communities at the national level and hatred towards each

other. It was further alleged that it had a detrimental effect on national unity.

The appellant filed a petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (for short, 'the BNSS') read with Article 226 of the Constitution of India, praying for quashing the said FIR.

By the impugned judgment and order, the learned Single Judge rejected the petition by holding that as the investigation is at a very nascent stage, interference cannot be made in view of the decision of this Court in the case of *Neeharika Infrastructure Pvt. Ltd. v State of Maharashtra. 2021 SCC Online SC 315*

A broad English translation of the said poem reads

"Those who are blood thirsty, listen to us If the fight for our rights is met with injustice,

We will meet that injustice with love.

If the drops flowing from a candle are like a flame (Analogy: if the tears from our face are like a flame)

We will use it to light up all paths.

If the bodies of our loved ones are a threat to your throne

We swear by God that we will bury our loved ones happily

Those who are blood thirsty, listen to us."

In para 10, the court observed that on the plain reading of the poem

there is nothing to do with any religion, community, race or even national integration. It do not in anyway jeopardise the sovereignty, unity, integrity or security of India. Rather it preaches non violence.

From para 11 to 19 the supreme court discussed about the applicability of any of the offences under section 196, 197, 302, 299, 57 of BNS

"*196. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony .*"

“197. Imputations, assertions prejudicial to national integration.

“299. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs .

“302. Uttering words, etc., with deliberate intent to wound religious feelings of any person.

“57. Abetting commission of offence by public or by more than ten persons.

Relevant para 22,23,24,25

Section 154 of the CrPC does not provide for making any preliminary

inquiry. However, as held in the case of Lalita Kumari, a preliminary inquiry is permissible if the information received does not disclose a cognizable offence and indicates the necessity for an inquiry.

A preliminary inquiry must be conducted only to ascertain whether a cognizable offence is disclosed. However, sub-Section (3) of Section 173 of the BNSS makes a significant departure from Section 154 of the CrPC. It provides that when information relating to the commission of a cognizable offence which is made punishable for 3 years or more but less than 7 years is received by an officer-in-charge of a police station, with the prior permission of a superior officer as mentioned therein, the police officer is empowered to conduct a preliminary

inquiry to ascertain whether there exists a prima facie case for proceeding in the matter. However, under Section 154 of the CrPC, as held in the case of Lalita Kumari, only a limited preliminary inquiry is permissible to ascertain whether the information received discloses a cognizable offence. Moreover, a preliminary inquiry can be made under the CrPC only if the information does not disclose the commission of a cognizable offence but indicates the necessity for an inquiry.

Sub-Section (3) of Section 173 of the BNSS is an exception to sub-Section (1) of Section 173. In the category of cases covered by sub-Section (3), a police officer is empowered to make a preliminary inquiry to ascertain whether a prima facie case is made out

for proceeding in the matter even if the information received discloses commission of any cognizable offence. That is very apparent as sub-Section (3) of Section 173 refers explicitly to receiving information relating to the commission of a cognizable offence. Therefore, in a case where sub-Section (3) of Section 173 is applicable, even if the information pertaining to the commission of any cognizable offence is received, an inquiry can be conducted to ascertain whether a prima facie case exists for proceeding in the matter. The intention appears to be to prevent the registration of FIRs in frivolous cases where punishment is up to 7 years, even if the information discloses the commission of the cognizable offence. However, under Section 154 of the CrPC, the inquiry

permitted by *paragraph 120.2* of the decision in the case of Lalita Kumari is limited only to ascertain whether the cognizable offence is disclosed.

Para 24. Under sub-Section (3) of Section 173 of the BNSS, after holding a preliminary inquiry, if the officer comes to a conclusion that a prima facie case exists to proceed, he should immediately register an FIR and proceed to investigate. But, if he is of the view that a prima facie case is not made out to proceed, he should immediately inform the first informant/complainant so that he can avail a remedy under sub-Section (4) of Section 173.

Some cases referred

Javed Ahmad Hajam v. State of Maharashtra 2024 SC (abrogation of A 370)

Anand Chintamani Dighe and anr. Vs. State of Maharashtra and ors. 2001 Bom (Bombay High Court was examining an order of the Government of Maharashtra directing forfeiture of all copies, manuscripts etc. of a play called Mee Nathuram Godse Boltoy)

42. Following is the summary of our conclusions:

(i) Sub-Section (3) of Section 173 of the BNSS makes a significant departure from Section 154 of CrPC. It provides that when information relating to the commission of a cognizable offence which is made punishable for 3 years or more but less than 7 years is received by an officer-in charge of a police station, with the prior permission of a superior officer as mentioned therein, the police officer is empowered to conduct a preliminary inquiry to ascertain whether there exists a prima facie case for proceeding in the matter. However, under Section 154 of the CrPC, as held in the case of Lalita Kumari, only a limited preliminary inquiry is

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

(ii) Under sub-Section (3) of Section 173 of the BNSS, after holding a preliminary inquiry, if the officer comes to a conclusion that a prima facie case exists to proceed, he should immediately register an FIR and proceed to investigate. But, if he is of the

view that a prima facie case is not made out to proceed, he should immediately inform the first informant/complainant so that he can avail a remedy under sub-Section (4) of Section 173.

(iii) In case of the offence punishable under Section 196 of the BNS to decide whether the words, either spoken or written or by sign or by visible representations or through electronic communication or otherwise, lead to the consequences provided in the Section, the police officer to whom information is furnished will have to read or hear the words written or spoken, and by taking the same as correct, decide whether an offence under Section 196 is made out. Reading of written words, or hearing spoken words will be necessary to determine whether the contents make out a case of the commission of a cognizable offence. The same is the case with offences punishable under Sections 197, 299 and 302 of BNS. Therefore, to

ascertain whether the information received by an officer-in-charge of the police station makes out a cognizable offence, the officer must consider the meaning of the spoken or written words. This act on the part of the police officer will not amount to making a preliminary inquiry which is not permissible under sub-Section (1) of Section 173.

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

police machinery is a part of the State within the meaning of Article 12 of the Constitution. Moreover, the police officers being citizens, are bound to abide by the Constitution. They are bound to honour and uphold freedom of speech and expression conferred on all citizens.

(v) Clause (2) of Article 19 of the Constitution carves out an exception to the fundamental right guaranteed under sub-clause (a) of clause (1) of Article 19. If there is a law covered by clause (2), its operation remains unaffected by sub-clause (a) of clause (1). We must remember that laws covered by the clause (2) are protected by way of an exception provided they impose a reasonable restriction. Therefore, when an allegation is of the commission of an offence covered by the law referred to in clause (2) of Article 19, if sub Section (3) of Section 173 is applicable, it is always appropriate to conduct a preliminary inquiry to ascertain

whether a prima facie case is made out to proceed against the accused. This will ensure that the fundamental rights guaranteed under sub-clause (a) of clause (1) of Article 19 remain protected. Therefore, in such cases, the higher police officer referred to in sub Section (3) of Section 173 must normally grant permission to the police officer to conduct a preliminary inquiry.

(vi) When an offence punishable under Section 196 of BNS is alleged, the effect of the spoken or written words will have to be considered based on standards of reasonable, strong-minded, firm and courageous individuals and not based on the standards of people with weak and oscillating minds. The effect of the spoken or written words cannot be judged on the basis of the standards of people who always have a sense of insecurity or of those who always perceive criticism as a threat to their power or position.

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

(viii) Free expression of thoughts and views by individuals or group of individuals is an integral part of a healthy civilised society. Without freedom of expression of

thoughts and views, it is impossible to lead a dignified life guaranteed by Article 21 of the Constitution. In a healthy democracy, the views, opinions or thoughts expressed by an individual or group of individuals must be countered by expressing another point of view. Even if a large number of persons dislike the views expressed by another, the right of the person to express the views must be respected and protected. Literature including poetry, dramas, films, stage shows including stand-up comedy, satire and art, make the lives of human beings more meaningful. The Courts are duty-bound to uphold and enforce fundamental rights guaranteed under the Constitution of India. Sometimes, we, the Judges, may not like spoken or written words. But, still, it is our duty to uphold the fundamental right under Article 19 (1)(a).

We Judges are under an obligation to uphold the Constitution and respect its

ideals. If the police or executive fail to honour and protect the fundamental rights guaranteed under Article 19 (1)(a) of the Constitution, it is the duty of the Courts to step in and protect the fundamental rights. There is no other institution which can uphold the fundamental rights of the citizens. (ix) 75 years into our republic, we cannot be seen to be so shaky on our fundamentals that mere recital of a poem or for that matter, any form of art or entertainment, such as, stand-up comedy, can be alleged to lead to animosity or hatred amongst different communities. Subscribing to such a view would stifle all legitimate expressions of view in the public domain which is so fundamental to a free society.