

**HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**

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**WRIT PETITION No.8890 OF 2020**

Between:

Kantamaneni Ravishankar.

... Petitioner

And

The State of Andhra Pradesh,  
Represented by its Principal Secretary,  
Home Department,  
A.P.Secretariat, Velagapudi,  
Amaravathi, Guntur District and others

... Respondents.

JUDGMENT PRONOUNCED ON 26.08.2020

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? No
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals Yes
3. Whether Their Ladyship/Lordship wish to  
see the fair copy of the Judgment? Yes

\* **THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**+ WRIT PETITION No.8890 of 2020**

% 26.08.2020

# Kantamaneni Ravishankar.

....Petitioner

v.

\$ The State of Andhra Pradesh,  
Represented by its Principal Secretary,  
Home Department,  
A.P.Secretariat, Velagapudi,  
Amaravathi, Guntur District and others

.... Respondents

**! Counsel for the Petitioners :** Sri A.Radha Krishna

**Counsel for Respondents:** Government Pleader for Home

<Gist :

>Head Note:

? Cases referred:

1. (2014) 8 SCC 273
2. AIR 2020 SC 1308
3. 1992 (3) SCC 637
4. 1995 (2) SCC 161
5. AIR 1954 SC 440
6. AIR 1958 SC 956
7. AIR 1973 SC 1461
8. AIR 1930 Lahore 465
9. AIR1977SC1489
- 10.104 (2003) DLT 510
- 11.(1992) 1 AC 34
- 12.(1994) 181 CLR 251
- 13.(2011) HCA 50

14. AIR2007SC976
- 15.2000 (8) SCC 590
- 16.1994 Cri L J 2320
- 17.AIR 1964 All 481
- 18.1997 (7) SCC 431
- 19.2007 (5) SCC 1
- 20.1995 (3) SCC 214
- 21.2020(2)MLJ(Cri)247
- 22.2016 (3) L.W., 577
- 23.2019 Cri L J 3784
- 24.AIR 1968 Calcutta 266
- 25.AIR 1997 AP 357
- 26.AIR 2019 SC 2109
- 27.2019 CriLJ 2270
- 28.(2015) 7 SCC 423
- 29.2000CriLJ4772
- 30.AIR1960SC154
- 31.AIR 2010 SC 3718
- 32.2017(3)PLJR101
- 33.(1994) 4 SCC 95
- 34.2016 (4) PLJR 274
- 35.1992 Supp (1) SCC 335

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**WRIT PETITION NO.8890 of 2020**

**ORDER:**

This writ petition is filed under Article 226 of the Constitution of India to issue Writ of Mandamus to declare the action of respondent No.3 in registering a case in Crime No.20 of 2020 dated 29.04.2020 by the Station House Officer, CID Police Station, Mangalagiri, Guntur District, Andhra Pradesh for the offence punishable under Sections 188, 505 (2) and 506 of Indian Penal Code (for short "I.P.C.") and Section 54 of the Disaster Management Act, 2005 on the basis of the complaint lodged by respondent No.4 as illegal, arbitrary, abuse of process of law and in violation of fundamental rights guaranteed under Article 14, 19 (1) (a) and 21 of the Constitution of India; consequently quash the proceedings in Crime No.20 of 2020 on the file of the Station House Officer, CID Police Station, Mangalagiri, Guntur District, Andhra Pradesh.

The petitioner is the Managing Director of "**Object One Information Systems Limited**" and the said company was incorporated under the Companies Act in 1999. "**Telugu One.com**" is one of the Digital Media Division of "Object One". The primary objective of "**Telugu One.com**" is to disseminate and enrichment of information relating to Telugu Language, Culture, Traditions, Literature and Entertainment and News across the world and the "Telugu One.com" is so popular across the world amongst telugu speaking people. The "Telugu One.com" is functioning right from 1999 and it has got 10 million viewers and it has branches across India as well as in U.S.A. There are approximately 150 employees working in the company and "Telugu One.com" is committed to spread Telugu Language as well as to entertain Telugu

Speaking People across the world. News component is a smaller component in the entire “Telugu One.com” and its primary objective is entertainment and spreading of Telugu Literature. Since 1999 there was no comment on the “Objective One Information Systems Limited” as well as “Telugu One.com”.

Unfortunately respondent No.4 lodged a complaint on 29.04.2020 to Additional Director General of Police, CID, Andhra Pradesh alleging that while he was watching Telugu One Channel in Youtube, he noticed false and fabricated audio clip is being circulating in social media against the Hon'ble Chief Minister of Andhra Pradesh and he further alleged that the said news item was posted for the purpose of causing annoyance, inconvenience, anger, insult, injury, criminal intimidation, hatred, ill will against the government and the Hon'ble Chief Minister and the same has created panic in the minds of people of Andhra Pradesh that Andhra Pradesh is unsafe during Carona Pandamic. It was further alleged that the fabricated audio clip is appearing in multiple platforms like whatsapp, twitter, face book, tick talk, youtube and help app, to mislead the public and make them nurse ill will, hatred against YS Jagan Mohan Reddy, his family, A.P. Government and Y.S.R.Congress Party. Respondent No.4 enclosed the voice clip in a pen drive to the complaint and requested to take action.

Respondent No.3 registered the said complaint as a case in Crime No.20 of 2020 for the offences punishable under Sections 188, 505 (2), and 506 of I.P.C. and Section 54 of the Disaster Management Act, 2005, issued F.I.R. The petitioner filed anticipatory bail application in Criminal Application No.1847 of 2020 and the same was disposed of by this Court by order dated 07.05.2020

directing respondent No.3 to follow guidelines in “**Arnesh Kumar v. State of Bihar**<sup>1</sup>” and also the procedure contemplated under Section 41 (A) of Cr.P.C.

The petitioner was shown as accused No.1 in the above case and respondent No.3 is taking all steps to cook up false evidence under the guise of the aforesaid complaint without there being any nexus or role played by him. The petitioner contended that the very registration of crime against him is arbitrary, illegal and against the fundamental rights guaranteed under Article 14, 19 (1) (a) and 21 of the Constitution of India since the said complaint did not disclose any offence much less the offences punishable under Sections 188, 505 (2), and 506 of I.P.C. and Section 54 of the Disaster Management Act, 2005.

The petitioner further contended that in the absence of *prima facie* material, registration of crime against him at the instance of respondent No.4 is nothing but abuse of process of law, consequently the proceedings against the petitioner are liable to be quashed.

The specific contention of the petitioner is that Section 188 of I.P.C. deals with disobedience of an order duly promulgated by the public servant. Section 188 of I.P.C. applies when there is wilful disobedience of an order promulgated by a public servant. In the instant case it was not mentioned in the complaint whether there is any order passed by any public servant much less it was not mentioned that the petitioner disobeyed the same, on this ground the proceedings against the petitioner for the offence punishable under Section 188 of I.P.C. are liable to be quashed.

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<sup>1</sup> (2014) 8 SCC 273

Further, Section 505 (2) of I.P.C. deals with punishment for making, publishing or circulating any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. But, in the instant case the audio clip which was the basis for prosecution is an opinion expressed by one person to another person relating to functioning of office of Hon'ble Chief Minister; as such it does not constitute offence punishable under Section 505 (2) of I.P.C.

Similarly, Section 506 of I.P.C. deals with punishment for criminal intimidation, but the allegations made in the complaint did not disclose the ingredients to constitute an offence of "Criminal Intimidation" as defined under Section 503 of I.P.C. Therefore, registration of crime against the petitioner for the offence punishable under Section 506 of I.P.C. is also a serious illegality.

The other offence alleged against the petitioner is punishable under Section 54 of the Disaster Management Act, 2005. Section 54 of the Disaster Management Act deals with punishment for false warning as to disaster or its severity or magnitude, leading to panic. The punishment for false warning is sentence of one year or sentence with fine. The petitioner contended that the material on record did not constitute an offence punishable under Section 54 of the Disaster Management Act.

Finally, it is contended that in the absence of any complaint from public servant as required under Section 195 of Cr.P.C. the

proceedings against the petitioner for the offence punishable under Section 188 of I.P.C. and in the absence of complaint as required under Section 60 of the Disaster Management Act, the proceedings for the offence punishable under Section 54 of the said Act are liable to be quashed, but respondent Nos.1 to 3 even without applying mind, registered crime against the petitioner for various offences though they are incompetent to register the same.

The petitioner contended that the registration of crime is nothing but abuse of process of law and it amounts to infringement of Fundamental Right guaranteed under Article 19 (1) (a) and 21 of the Constitution of India while placing reliance on the judgment of the Apex Court in "**Anuradha Bhasim Vs. Union of India**"<sup>2</sup> contended that the very registration of crime is illegal and violative of fundamental right guaranteed under the Constitution of India. He also the drawn the attention of this Court to the judgments of the Apex Court in "**LIC Vs. Manu Bhai**"<sup>3</sup> and "**Secretary, Ministry of Information and Broadcasting, Government of India Vs. Cricket Association of Bengal**"<sup>4</sup> and requested to quash the proceedings by exercising discretionary power under Article 226 of the Constitution of India.

The petitioner also filed copy of F.I.R. annexing complaint, remand report to show that the allegations made in the complaint do not constitute any offence much less an offence punishable under Sections 188, 505 (2) and 506 of I.P.C. and Section 54 of the Disaster Management Act, 2005.

Respondent No.3 filed counter admitting about the registration of crime against the petitioner under various provisions based on the

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<sup>2</sup> AIR 2020 SC 1308

<sup>3</sup> 1992 (3) SCC 637

<sup>4</sup> 1995 (2) SCC 161

complaint lodged by respondent No.4 while contending that the petitioner is disentitled to claim relief under Article 226 of the Constitution of India and this Court cannot exercise such power under Article 226 of the Constitution of India to quash the proceedings in Crime No.20 of 2020.

It is specifically contended that the allegations made in the complaint discloses commission of cognizable offence, since, the information posted and as could be discernable from the contents of the complaint, the same would amount to circulating misinformation and disinformation with a criminal intent to instigate the people to develop a discontent against the government during the Covid-19 period by showing the telephonic conversation stated to have been made by the senior IAS officer of the Chief Minister Peshi which is very offensive in character and damaging the image of the Hon'ble Chief Minister and the Government of Andhra Pradesh.

It is brought to the notice of this Court that the Government of India issued advisory for curbing false news/misinformation on Corona Virus. The disinformation is generally referred to deliberate and orchestrated attempt to confuse and manipulate people by delivering dishonest information to the people. The purveyors of the disinformation prey on the vulnerability or partisan potential of recipients whom they hope to enlist as amplifier and multipliers so as to achieve their sinister designs of defaming the government and creating a discontent among the people of the state. By telecasting the audio clip the perpetrators of the crime intends to animate the people into becoming conduits of their message by exploiting their propensities to share information and disseminate the same to large section of population for developing hatred and discontent against

the government and the holders of public office so as to achieve their oblique designs for other collateral purposes.

It is further contended that on verification of the video clipping, it is noticed that an emblem showing 'T one' channel in the video and after browsing the details of the said video, it was noticed that the voice of the one person who is in telephonic conversation with the so called IAS officer is very close to the voice of One M. Anji, accused No.2. It is further noticed that the Managing Director of the Tone youtube web channel is the petitioner herein, who is native of Avanigadda of Krishna District and resident of Kamalapuri colony, Srinagar colony. Hyderabad. After watching the said youtube video, it is established that accused No.2 in the crime namely Mr. Anji had conspired and participated in creating the said audio conversation in a video format and the petitioner herein being the Managing Director of the 'Teluguone web channel' had complicity in the entire episode in creating the said audio in a video format and telecasted the same which contain most abusive language and comments with an intention to cause annoyance, inconvenience, danger, insult, injury, criminal intimidation, hatred ill-will against the government and the holders of the high office so as to create panic in the minds of general public of AP, that the state is unsafe during the Carona pandemic.

It is further contended that during investigation police seized (1) Hard disk -- Seagate compariy. 1TB. BARRACUDA, R.O.33880605, date of manufacturing 06 Sep 2018. (2) Hard disk - Seagate company, 2000GB, BARRACUDA, C.0.41821129-FB4 date of manufacturing 02/2013. (3) Hard disk - Seagate company, 500GB, Pipeline HD TM2, C103720322-6B4, date of manufacturing

04/2012, (4) Hard disk - Seagate company. 160GB. 2284680407C, (5) Hard disk - Seagate company, Meda List, made in Singapore-3, model: ST 39140W, (6) Hard disk - Seagate company, 1TB, BARRACUDA MO 84280822-FB8, date of Mfg. 06 Sep 2018, (7) Hard disk Seagate company 2000GB, BARRACUDA. CZ 43820809-CA4, Mfg 09/2012, (8) Hard disk - Western Digital company. 1TB, WD 10EALX, SIN. WCATR 8031131 (9) Hard disk - Western Digital company, 1TB, WD 10EZEX, S/N WCC 6Y5CLS1HX, made in Thailand, date of manufacturing 13 Sep 2019 in the ground floor (10) 109 CDs and (11) Sandisk company Pen-drive cruze blade model, 16GB, Sl.No.BL181126527, made in Malaysia in the 1<sup>st</sup> floor, and also (12) CC Cameras Monitoring System. After seizure of the said material, respondents sent the same for examination by FSL experts since the source of information is to be established with reference to the scientific evidence as it is related to a cyber crime. At this stage, this Court cannot entertain the petition under Article 226 of the Constitution of India, at best, the petitioner may approach the Court under Section 482 of Cr.P.C.

Sri A.Radha Krishna, learned counsel for the petitioner, would contend that respondent No.3 is incompetent to register crime for the offence punishable under Section 188 of I.P.C. since it was not the complaint lodged by public servant as required under Section 195 of Cr.P.C. Similarly, the allegations made in the F.I.R. do not constitute an offence punishable under Sections 505 (2) and 506 of I.P.C. *prima facie*. For the offence punishable under Section 54 of the Disaster Management Act; the National Authority or the State Authority or the Central Government or the State Government, or the District Authority or any other authority or officer authorised in this behalf

by that Authority or Government, as the case may be, shall file complaint or any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid alone is entitled to file complaint, but no such complaint was filed by following the procedure prescribed under the Disaster Management Act, 2005. Consequently, registration of crime for the offence punishable under Section 54 of the Disaster Management Act is a serious illegality, thereby very registration of crime against the petitioner for various offences (referred above) is nothing but abuse of process of law and violative of Article 14, 19 (1) (a) and 21 of the Constitution of India, requested to quash the proceedings in Crime No.20 of 2020.

Sri Maheswar Reddy, learned Government Pleader for Home, supported the action of respondent No.3 based on the complaint lodged by respondent No.4 for various offences while drawing the attention of this Court to Section 505 (2) and 506 of I.P.C., which are cognizable offences in the State of Andhra Pradesh as the allegations made in the complaint lodged by respondent No.4 directly developing hatred ill-will towards the Government, Chief Minister and his family while creating panic in the minds of public on account of Covid-19, such act of the petitioner constitute offence punishable under Section 505 (2) and 506 of I.P.C. besides the offence punishable under Section 188 of I.P.C. and Sections 54 of the Disaster Management Act, requested to dismiss the petition.

Considering rival contentions, perusing the material available on record, the point that arises for consideration is:

***“Whether the allegations made in the complaint lodged by the fourth respondent with third respondent constitute offences punishable under Sections 188, 505(2) and 506 I.P.C and Section 54 of Disaster Management Act prima facie, and whether registration of crime for the offences punishable under Section 188 of I.P.C and Section 54 of Disaster Management Act is in contravention of Section 195(1)(a)(1) Cr.P.C and Section 60 of Disaster Management Act. If not, the proceedings in Crime No.20 of 2020 dated 29.04.2020 on the file of Station House Officer, C.I.D. Police Station, Mangalagiri, Guntur District are liable to be declared as illegal and consequently be quashed?”***

**P O I N T:**

The power of the Court under Article 226 of Constitution of India can be exercised when the State and its instrumentalities have abused process of law in registration of crime. Here, the petitioner complained that by abusing process of law, crime is registered against the petitioner for various offences referred supra. Therefore, this Court can exercise such power under Article 226 of the Constitution of India.

One of the grounds urged by the Respondent No.3 before this Court is that the Court cannot exercise power under Article 226 of the Constitution of India when there is a specific provision in Code of Criminal Procedure, but the same cannot be accepted for the reason that the power under Article 226 of the Constitution of India is very wide, discretionary and most extensive in nature and the very vastness of powers conferred on the High Court imposes on it, the responsibility to use them with great caution and circumspection. Accordingly the High Court will necessarily exercise the jurisdiction

in accordance with the well known judicial considerations and well-established principles.

The Apex Court in “**T.C.Basappa Vs. T.Nagappa**<sup>5</sup>” observed that “in view of the express provisions of our Constitution we need not now look back to the early history or the procedural technicalities of these writs in the English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law.”

In “**The Kerala Education Bill, 1957, Special Reference 1 of 1958**<sup>6</sup>” the Apex Court while interpreting the provisions of the Constitution observed that the law which seeks to take away or restrict the jurisdiction of the High Court under Article 226 must be held to be void. The most important powers which have been given to the court by the Constitution is under Article 226 to the High Courts and under Article 32 to the Supreme Court of India. Dr.Ambedkar in Constituent Assembly described Article 32 as the very soul of the Constitution because it provided effective remedies against violation of fundamental rights, remedies which no legislature could take away.

Before the pronouncement of the celebrated judgment in “**Keshvanand Bharti Sripoadogalavaru Vs. State of Kerala**<sup>7</sup>”, the view was that the powers under Article 226 cannot be taken away by any law except by an amendment in the Constitution. But thereafter

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<sup>5</sup> AIR 1954 SC 440

<sup>6</sup> AIR 1958 SC 956

<sup>7</sup> AIR 1973 SC 1461

the consistent view has been that judicial review is the basic feature of the Constitution, it is an integral part of the Constitution and its basic structure, consequently the powers under Article 226 of the Constitution can not be taken away by a constitutional amendment.

In “**Emperor Vs. Sukhdev and others**”<sup>8</sup> the Court observed that the authority of the Court exists for the advancement of justice. If any attempt is made to abuse that authority so as to prejudice justice, the court must have power to prevent that abuse. Courts exist to promote justice and prevent injustice. In “**State of Karnataka Vs. L.Muniswamy and others**”<sup>9</sup> it is observed that the High Court has inherent powers to prevent the abuse of the process of the Court designed to achieve a salutary public purpose, namely, the Court proceedings ought not be permitted to degenerate into a weapon of harassment or persecution.

In view of the law declared by the Apex Court, it can safely be held that the High Court under Article 226 of the Constitution and under Section 482 of Cr.P.C. have extremely wide powers to pass any order or give any direction which is imperative for advancing the cause of justice and for preventing an abuse of the process of the court or for otherwise securing the ends of justice.

Following the above principles, the Delhi High Court in “**Govind Vs. The State (Government of NCT of Delhi)**”<sup>10</sup> concluded that when an aggrieved person approaches the court in a petition under Article 226 of Constitution of India read with Section 482 of the Cr.P.C. then the court is possessed with enormous powers to do justice or remove injustice. The Court's vast powers are meant to prevent any abuse of the process or to secure the ends of justice,

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<sup>8</sup> AIR 1930 Lahore 465

<sup>9</sup> AIR1977SC1489

<sup>10</sup> 104 (2003) DLT 510,

both under Section 482 Cr.P.C and Article 226 of the Constitution. These powers must be exercised for the advancement of justice. Ends of justice are always higher than the ends of mere law and for accomplishing that noble, goal the courts have rightly been invested with adequate powers. The powers of the High court under Article 226 cannot be whittled down, nullified, curtailed, abrogated, diluted or taken either by judicial pronouncement or by the legislative enactment or even by the amendment of the Constitution. The power of judicial review is inherent part of the basic structure and it cannot be abrogated without affecting the basic structure of the Constitution. As aptly observed in the Kerala Education Bill (supra) that the law which seeks to take away or restrict, the jurisdiction of the High Court under Article 226 must be held to be void. In view of these powers, discretion of the High Court under Article 226 is unfettered.

Thus, in view of the law declared in the said judgments, the Court can exercise inherent power under Article 226 of Constitution of India similar to the power that conferred by Section 482 of Cr.P.C. on the High Court. Therefore, the contention of the learned Government Pleader for Home that this Court cannot exercise power under Article 226 of the Constitution of India to quash the proceedings in Crime No.20 of 2020 registered for the offences punishable under Sections 188, 505 (2) and 506 of I.P.C. and Section 54 of the Disaster Management Act cannot be accepted, and the same is hereby rejected.

As discussed above, when the law is abused by the State or its instrumentalities, this Court can exercise power under Article 226 of the Constitution of India or under Section 482 of Cr.P.C.

In “**Hui Chi Ming**<sup>11</sup>” Lord Lowry described “abuse of process” as “something so unfair and wrong that the court would not allow a prosecutor to proceed with what is in all other respects a regular proceeding.”

In “**R v Rogers**<sup>12</sup>” Mason, Chief Justice of the High Court of Australia stated as follows:

*“These statements indicate that there are two aspects to abuse of process: first, the aspect of vexation, oppression and unfairness to the other party to the litigation and, secondly, the fact that the matter complained of will bring the administration of justice into disrepute. This led the majority in Walton v. Gardiner to state that the question whether criminal proceedings should be permanently stayed was to be determined by a weighing process involving a balancing of a variety of considerations ((12) (1993) 177 CLR at 395-396.). Those considerations, which reflect the two aspects of abuse of process outlined above, include ((13) ibid. at 396.):*

*“the requirements of fairness to the accused, the legitimate public interest in the disposition of charges of serious offences and in the conviction of those guilty of crime, and the need to maintain public confidence in the administration of justice”.*

More recently in “**Moti v The Queen**<sup>13</sup>” the High Court (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ) confirmed two broad purposive categories of abuse of process at [57]:

*“The third basic proposition is that, as pointed out in the joint reasons of four members of this Court in Williams v Spautz, two fundamental policy considerations affect abuse of process in criminal proceedings. First, “the public interest in the administration of justice requires that the court protect its ability to function as a court of law by ensuring that its processes are used fairly by State and citizen alike”. Second, “unless the court protects its ability so to function in that way, its failure will lead to an erosion of public confidence by reason of concern that the court’s processes may lend themselves to oppression and injustice”. Public confidence in this context refers to the trust reposed constitutionally in the courts to protect the integrity and fairness of their processes. The concept of abuse of process extends to a use of the courts’ processes in a way that is inconsistent with those fundamental requirements”.*

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<sup>11</sup> (1992) 1 AC 34

<sup>12</sup> (1994) 181 CLR 251

<sup>13</sup> (2011) HCA 50

Thus, failure to act in all fairness against the accused or registration of crime based on bogus complaint or the allegations in complaint do not constitute the offence, registration of crime would constitute abuse of process of law. Therefore, when the State or its instrumentalities abused process of law, the Court can interfere with such proceedings while exercising power of judicial review.

In “**West Bengal State Electricity Board Vs. Dilip Kumar Ray**<sup>14</sup>” the Apex Court held that “in general, a person may utilize any form of legal process without any liability, save liability to pay the costs of proceedings if unsuccessful. But an action lies for initiating civil proceedings. Such as action, presentation of a bankruptcy or winding up petition, an unfounded claim to property, not only unsuccessfully but maliciously and without reasonable and probable cause and resulting in damage to the plaintiff.”

A malicious abuse of legal process consists in the malicious misuse or misapplication of process to accomplish a purpose not warranted or commanded by order of Court - the malicious perversion of a regularly issued process, whereby an improper result is secured. There is a distinction between a malicious use and a malicious abuse of legal process. An abuse is where the party employs it for some unlawful object - not the purpose which it is intended by the law to effect; in other words, a perversion of it. Willfully misapplying Court process to obtain object not intended by law.

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<sup>14</sup> AIR2007SC976

Thus, when the process is abused by the State or its instrumentalities, the Court can interfere and quash the proceedings.

The Apex Court in "**Roy V.D. Vs. State of Kerala**"<sup>15</sup> observed thus:-

*"It is well settled that the power under section 482 Cr.P.C has to be exercised by the High Court, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under section 482 of Cr.P.C. to quash proceedings in a case like the one on hand, would indeed secure the ends of justice."*

The Apex Court in number of cases laid down the scope and ambit of courts powers under Section of 482 Cr.P.C. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice.

In view of the law laid down by the Apex Court in various judgments (referred above) and other Foreign Courts, though not binding on this Court, but having persuasive value, it can safely be concluded that when the State or its instrumentalities abused its

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<sup>15</sup> 2000 (8) SCC 590

authority/process of law, registered crime against a person in violation of law, the Court can exercise power under Article 226 of the Constitution of India.

Contextually, it is necessary to refer the duties of the police officers. The primary duty of the police is to maintain law and order since they are working for providing protection to the public from any injury.

The most important traditional function of the police is to deal with the criminal in an action, this function required detection and investigation of crime, arrest of the offenders and the collection of evidence against those who are prosecuted in Court of law. Dr. Jerome Hall has rightly pointed out in his article "Police authority and practices" that according to the legal and political theory, the rights and duties of the police to inflict punishment are sharply limited but since their job is to pick up criminals from society. They play a vital role in bringing the offenders to justice. It is generally believed that police are obliged by the nature of their duties to use violence as a measure to control and apprehend criminals in the presence of counter violence. The Apex Court has rightly said in number of cases that the duty of the Investigating Officer is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth.

Another purpose of the police force is to effect prevention of crime. This function involves patrolling by the police and prevention action against potential wrongdoers under the vagrancy laws.

The third function of the police is owing to the growth of certain problems of the contemporary period involving the enforcement of a wide variety of regulation. Which are not concerned directly with the criminal; direction of automobile traffic, enforcement sanitation and licensing regulations, control of crowds, action against obscene literature and civil defense and disaster management duty. The police in India have to perform all the functions enumerated above as in other countries, but their burden is exceptionally heavy due to the peculiarity of the socio-economic life of the community heterogeneous nature of the population and the existence of almost all the political philosophies. How far are the police in India capable and adequate of meeting such a stupendous challenge? What are the various obstacles which the police face while discharging their functions?

The difficulties of police are enumerated are as follows:

- (1) Inadequacy of staff.
- (2) Abuse of statements taken by police.
- (3) Lack of Co-ordination with other investigating agencies.
- (4) Police and its relations with community.

This Court is unconcerned with the difficulties of the police in India. However, the relationship of police with the community/society is relevant for the purpose of deciding the issue before the Court.

Everyone knows about the unpleasant relationship between police and community which creates difficulties during investigation. Police expect that all difficulties in society should be solved by the police, but the basic duty of police is protection of human life, liberty

and property and enforcement of law and order. Increasing crime, growing pressure of living, rising population, labour disputes, problems of student, political activities with the call of extremists, enforcement of social and economic legislation etc. have added new dimension of police tasks in the Country. The lack of public co-operation in police work makes difficult to discharge their function efficiently. It is common fact that law-abiding citizens have greater fear for police than offenders and do not hesitate to use violence, undue influence to secure their escape, threats etc. On the other hand normal people avoid contact with the public and prefer to keep away from law courts even at the loss of suffering or loss of legitimate claims rather than reporting matter to the police for their action.

The Apex Court in “**Rampal Pithwa Rahidas and ors. vs. State of Maharashtra**”<sup>16</sup> held that police must carry out investigations with due honesty, and fairly and must not resort to fabricating false evidence or creating false clues. Otherwise it would be an invitation to anarchy.

It is of the utmost importance that people entrusted with the investigation must be scrupulously honest and efficient, otherwise cases both of innocent persons being wrongly convicted and of really guilty persons being wrongly let off are likely to occur.

Therefore, it is imperative on the part of the police to conduct investigation in a fair manner to see that no innocent be convicted by fabricating any evidence during investigation.

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<sup>16</sup> 1994 Cri L J 2320

The investigating officer is required not only to collect evidence for the successful prosecution of the case but also to exercise his discretion in arriving at a decision as to whether the case is fit for trial. It is, therefore, just and expedient that the person entrusted with the investigation should be one who is not unduly interested in the case and is not personally acquainted with its facts (Vide: **Gopal Krishna Vs. State**<sup>17</sup>)

Keeping in view the responsibilities and duties of the police, the present case is to be examined to find out whether the police abused process of law, if any, as complained by the petitioner, in utter disobedience of their duty and by making out a false case against the petitioner or not?

The first and foremost contention of the petitioner before this Court is that the allegations made in the complaint lodged by respondent No.4 with respondent No.3 do not constitute any of the offences, more particularly the offence punishable under Section 505 (2) and 506 of I.P.C. so also under Section 188 of I.P.C. and Section 54 of the Disaster Management Act, besides raising other contention with regard to illegality in registration of crime for the offence punishable under Section 188 of I.P.C. and under Section 54 of the Disaster Management Act.

In view of the specific contention raised before this Court, it is appropriate to extract the complaint lodged by respondent No.4 with respondent No.3, which is as follows:

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<sup>17</sup> AIR 1964 All 481

Dt.29.04.2020

To

Sri P.V.Sunil Kumar, IPS,  
Additional DGP, CID,  
Andhra Pradesh

Respected Sir,

I am Prathuri Jagadeesh S/o.Veeraiah, R/o.Uddandarayunipalem Village, Thulluru Mandal, Guntur District. ***While I was watching Youtube in "T One News Channel" a video in the name of A.P.Chief Minister Office noticed some news knowing to be false, fabricated audio clips being circulated in the social medial platform against the Hon'ble Chief Minister of Andhra Pradesh Sri Y.S.Jagan Mohan Reddy and the Government of Andhra Pradesh. This news was posted for the purpose of causing annoyance, inconvenience, danger, insult, injury, criminal intimidation, hatred, ill will against the Government and the Hon'ble Chief Minister creating panic in the minds of the people of Andhra Pradesh that the State is unsafe during Corona Pandemic. The said audio clip and fabricated video format are appearing in multiple handles of whatsapp, twitter, face book, tik tok, youtube and helo app by making use computers and mobile phones to mislead the public and to make them nurse ill will hatred against Shri Y.S.Jagan Mohan Reddy, his family, A.P. Government and Y.S.R. Congress Party.***

The said voice clip is herewith given in attached pen drive (Kings Top Data Traveller G4) for your information. As observed from the postings, it is noticed that these are intentionally done to cause annoyances, inconvenience, anger, obstruction, insult/defamation, injury, criminal intimidation, hatred political knots, public contacts to harm the peace and tranquility in the society according to multiple legal provisions of law and are punishable with imprisonment.

I, therefore, request you to get the postings examined and investigated in order to take appropriate punishable action as the information posted are grossly offensive and menacing in character, damaging the image of the Hon'ble Chief Minister and the Government of Andhra Pradesh.

Yours faithfully

(Pothuri Jagadeesh)  
9542520408

The sentences shown in Bold Italics above, at best, would go to show that audio clip circulated in social media platforms is against the interest of Hon'ble Chief Minister of Andhra Pradesh and

Government of Andhra Pradesh. According to respondent No.4, those clippings are posted only to cause annoyance, inconvenience, danger, insult, injury, criminal intimidation, hatred, ill will against the Government and the Hon'ble Chief Minister, creating panic in the minds of the people of Andhra Pradesh that the State is unsafe during Corona Pandemic. Now, it has to be examined "whether those allegations would constitute an offence punishable under Section 505 (2) of I.P.C. since the crime was registered under Section 505 (2) of I.P.C."

Section 505 (2) of I.P.C. is extracted hereunder for better appreciation.

"Section 505 (2): Statements creating or promoting enmity, hatred or ill-will between classes:-

Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

The word 'classes' is not defined in Indian Penal Code. The meaning of "Class" as per Cambridge Dictionary is as follows:

"A group of students who are taught together at school, college, or university:

A group of people within society who have the same economic and social position"

The meaning of word "class" as per Merriam Webster Dictionary is as follows:

1. A body of students meeting regularly to study the same subject
2. A group sharing the same economic or social status
3. A group, set, or kind sharing common attributes
4. A division or rating based on grade or quality
5. The best of its kind

Further, a bare look at the contents of Section 505 (2) of I.P.C., to constitute an offence punishable under Section 505 (2) of I.P.C. there must be publication or circulation of any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. Therefore, to constitute an offence punishable under Section 505 (2) of I.P.C. there must be two groups or classes belong to two different castes, religions or communities etc.

Here, there are no two groups or classes and even Sri Y.S.Jaganmohan Reddy and the Government by itself cannot be construed as one group. In the absence of two groups, the question of commission of offence punishable under Section 505 (2) of I.P.C. does not arise.

In “***Bilal Ahmed Kaloo Vs. State of Andhra Pradesh***<sup>18</sup>” the Apex Court drawn the distinction between Section 153-A of I.P.C. and Section 505 (2) of I.P.C., held that the common ingredient in both the offences is promoting feeling of enmity, hatred or ill-will

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<sup>18</sup> 1997 (7) SCC 431

between different religious or racial or linguistic or regional groups or castes or communities. Section 153A covers a case where a person by "words, either spoken or written, or by signs or by visible representations" promotes or attempts to promote such feeling. Under Section 505(2), promotion of such feeling should have been done by making and publishing or circulating any statement or report containing rumour or alarming news.

The Apex Court further observed that the main distinction between the two offences is that publication of the word or representation is not necessary under the former, such publication is sine qua non under Section 505. The words "whoever makes, publishes or circulates" used in the setting of Section 505(2) cannot be interpreted disjunctively but only as supplementary to each other. If it is construed disjunctively, any one who makes a statement falling within the meaning of Section 505 would, without publication or circulation, be liable to conviction. But the same is the effect with Section 153A also and then that Section would have been bad for redundancy. The intention of the legislature in providing two different sections on the same subject would have been to cover two different fields of similar colour. The fact that both sections were included as a package in the same amending enactment lends further support to the said construction.

The common feature in both sections being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or language or regional groups or castes and communities it is necessary that at least two such groups or communities should be involved. Merely inciting the felling of one community or group

without any reference to any other community or group cannot attract either of the two sections. Finally, the Apex Court observed that the appellant therein who has not done anything as against any religious, racial or linguistic or regional group or community cannot be held guilty of either the offence under Section 153A or under Section 505(2) of IPC.

In “**Manzar Sayeed Khan Vs. State of Maharashtra**<sup>19</sup>” the Apex Court observed that merely inciting the feelings of one group or community without any reference to some other group or community, cannot be brought under the ambit of Section 505 (2) of I.P.C. It further emphasized that the effect of words should be judged from the standards of reasonable, strong-minded and courageous men. The perspective of weak and vacillating minds cannot be considered.

The Apex Court in “**Balwant Singh and another Vs. State of Punjab**<sup>20</sup>” held that *mens-rea* is a necessary ingredient for the offence under Section 153A. *Mens-rea* is an equally necessary postulate for the offence under Section 505(2) also as could be discerned from the words "with intent to create or promote or which is likely to create or promote" as used in that sub-section.

In “**K.Divya Vs. The State, represented by the Sub-Inspector of Police, Gudalur Police Station, the Nilgris District**<sup>21</sup>” the Madras High Court while relying on its earlier judgment in “**S.Tamilselvan and another Vs. The Government of**

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<sup>19</sup> 2007 (5) SCC 1

<sup>20</sup> 1995 (3) SCC 214

<sup>21</sup> 2020(2)MLJ(CrI)247

**Tamil Nadu**<sup>22</sup> highlighted the importance of fundamental right guaranteed under Article 19 (1) (a) of the Constitution of India and quashed the complaint.

In “**Vishal Dadlani Vs. State of Haryana**<sup>23</sup>” the Punjab-Haryana High Court relied on “**Manzar Sayeed Khan Vs. State of Maharashtra**” (referred supra) “**Balwant Singh and another Vs. State of Punjab**” (referred supra) and “**Sunilakhya Chowdhury Vs. H.M. Jadwet**<sup>24</sup>” and held the common feature in both sections being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or language or regional groups or castes and communities it is necessary that at least two such groups or communities should be involved. Merely inciting the felling of one community or group without any reference to any other community or group cannot attract either of the two sections. It is further held that it is necessary that at least two groups or communities should be involved as the intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused persons.

The “**A.B.K.Prasad Vs. State of Andhra Pradesh**<sup>25</sup>” the High Court of Andhra Pradesh while dealing with the similar incident of publication in a newspaper regarding malpractices in election of Allagadda Legislative Assembly Constituency, held as follows:

“Principles which the Courts have evolved in respect of malice in its legal sense are stated quite candidly in several pronouncements of the Courts in India and in the Judgment of the Supreme Court in S. R. Venkataraman Vs.

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<sup>22</sup> 2016 (3) L.W. 577

<sup>23</sup> 2019 Cri L J 3784

<sup>24</sup> AIR 1968 Calcutta 266

<sup>25</sup> AIR 1997 AP 357

Union of India (AIR1979SC49) Significant extracts on the principle of malice in law from *Shearer v. Shields*, 1914 AC 808, *Pilling v. Abergele Urban District Council*, (1950) 1 KB 636, *The Queen on the Prosecution of Richard Westbrook v. The Vestry of St. Pancras* (1890) 24 QBD 371, and *Sedler v. Sheffield Corporation* (1924) 1 Ch. 483, are quoted which reads as follows : (at Pp. 51-52 of AIR) "Malice in law is, however, quite different. Viscount Haldane described it as follows in *Shearer v. Shields*, (1914) AC 808 at p. 813 :-

A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law. and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently."

Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.

It is however not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard C.J., in *Pilling v. Abergele Urban District Council*, (1950) 1 KB 636 where a duty to determine a question is conferred on an authority which state their reasons for the decision, "and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the Court to which an appeal lies can and ought to adjudicate on the matter.

The principle which is applicable in such cases has thus been stated by Lord Esher M. R. in *The Queen on the Prosecution of Richard Westbrook v. The Vestry of St. Pancras*, (1890) 24 QBD 371 at page 375 :-

"If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."

This view has been followed in *Sedler v. Sheffield Corporation*, (1924) 1 Ch 483.

We are in agreement with this view. It is equally true that there will be an error of fact when a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstance. This is so clearly unreasonable that what is done under such a mistaken belief might almost

be said to have been done in bad faith; and in actual experience, and as things go, these may well be said to run into one another.”

In view of the law declared by the Courts (referred above), the allegations made in the complaint must necessarily disclose such publication, statement or circulation of such statement containing rumour or alarming news among the public based on religion, race, place of birth, residence, language, caste or community. But in the absence of feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, the very registration of crime for the offence punishable under Section 505 (2) of I.P.C. is illegal.

On close examination of contents of the complaint dated 29.04.2020 lodged by respondent No.4 with respondent No.3, I find no such two groups and such statement creates or likely to create any ill-will or hatred between two groups or classes on the basis of race, religion etc., but the allegation in the complaint is that the postings in Youtube is only to insult the government and the present Chief Minister. The Government and the Chief Minister cannot constitute as one group or two groups since the Government is manned by Chief Minister being a people representative. In the absence of any other group, creation of such enmity, ill-will etc. on the basis of religion etc., does not constitute an offence punishable under Section 505 (2) of I.P.C.

In view of the law declared by the Apex Court including the High Court of Andhra Pradesh and persuaded by the judgments of other High Courts, I have no hesitation to hold that the allegations made in the complaint do not constitute an offence punishable under Section 505 (2) of I.P.C., *prima facie*, but respondent No.3 being the

instrumentality of the State working under the thumb of the State, for the reasons best known to him by abuse of process of law, registered crime against the petitioner for the offence punishable under Section 505 (2) of I.P.C. The prime duty of police is narrated above, before commencing investigation, the police officer has to satisfy that the allegation made in the complaint *prima facie* constitute cognizable offence to proceed further with the investigation. Registration of a crime without any material allegation to constitute cognizable offence, harassing the public in the guise of investigation may lead to anarchy, exhibits the lack of minimum knowledge about law, given an impression that the department is manned by an officer without any administrative control and such acts of the department creates an impression that the people are living in a kakistocracy, though the petitioner is living in a democracy. Unless such acts of the officers are controlled, it may lead to serious consequences causing damage to life, liberty and reputation of an individual which is violative of fundamental rights guaranteed under Article 21 of the Constitution of India. Hence, registration of crime against the petitioner for the offence punishable under Section 505 (2) of I.P.C. is liable to be quashed since the crime was registered by abuse of process of law.

The other offence allegedly committed by the petitioner is punishable under Section 506 of I.P.C. i.e. punishment for criminal intimidation. The word criminal intimidation is defined under Section 503 of I.P.C. The main ingredients to constitute an offence under Section 503 of I.P.C. are as follows:

- (1) ***Threatens injury to his person.***
- (2) ***Threatens injury to his reputation;***
- (3) ***Threatens injury to his property;***
- (4) ***Threatens injury to the person or reputation of anyone in whom the person is interested.***

Further, the intention should be to cause alarm to that person; or to make them perform any act which they are not legally bound to do; or to omit any act which they are legally entitled to perform. If they are forced to do all of these acts as a means to avoid execution of such threat, this amounts to criminal intimidation.

The Apex Court in “***Vikram Johar Vs. State of Uttar Pradesh***<sup>26</sup>” observed that the mere act of abusing a person in a filthy language does not satisfy the essential ingredients of the offence of criminal intimidation. The complaint was that the accused came with a revolver to the complainant’s house and abused him in a filthy language. They also attempted to assault him but when the neighbours arrived, they fled from the spot. The Bench held that the above allegations prima facie do not constitute the offence of criminal intimidation.

The Tripura High Court in “***Shri Padma Mohan Jamatia Vs. Smt. Jharna Das Baidya***<sup>27</sup>” observed that the mere use of abusive words/ filthy language and body posture during the speech of a political leader is not included within the ambit of the provisions of criminal intimidation under the IPC.

In “***Manik Taneja Vs. State of Karnataka***<sup>28</sup>”, the Apex Court held that posting comments about ill-treatment by the police personnel on Facebook Page may not amount to criminal

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<sup>26</sup> AIR 2019 SC 2109

<sup>27</sup> 2019 CriLJ 2270

<sup>28</sup> (2015) 7 SCC 423

intimidation. In this case, the appellant was involved in a road accident, wherein she clashed with an auto-rickshaw. The passenger of the auto sustained injuries and was subsequently admitted in a hospital. The appellant duly paid all the expenses of the injured and no FIR was lodged. Because, she posted certain comments on facebook page against the police, the police registered crime for the offence under Section 506 I.P.C., but the Court concluded that such posting would not constitute offence under Section 506 I.P.C.

In “**Amitabh Adhar Vs. NCT of Delhi**<sup>29</sup>” the High Court of Delhi held that a mere threat does not amount to criminal intimidation. There must be an intention to cause alarm to the person threatened.

The Supreme Court elaborated the scope of Section 503 of I.P.C. in “**Romesh Chandra Arora Vs. State**<sup>30</sup>”. In this case, the accused-appellant was charged with criminal intimidation. The accused threatened a person X and his daughter, of injury to reputation by releasing a nude picture of the girl unless money was paid to him. The intent was to cause alarm to them. The Court stated that the aim of the accused was to cause alarm to get the money and to ensure that he did not go ahead with the threat of releasing the photographs on a public platform.

In “**Manik Taneja Vs. State of Karnataka**” (referred supra), the Apex Court interpreted Section 503 of I.P.C. by holding that to constitute the offence of “criminal intimidation”, there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the

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29 2000CriLJ4772

30 AIR1960SC154

person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

The Apex Court further held:

“In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of “criminal intimidation”. **The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section.** But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of the appellants posting a comment on Facebook may not attract ingredients of criminal intimidation in Section 503 IPC.”

[Emphasis supplied]

In the present case, there was absolutely no threat to the public or causing alarm in the mind of any person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. At best, the allegations in the complaint would disclose that the statement in the social platform may create or likely to create panic in the minds of the public that the entry into the State of Andhra Pradesh is not safe during Covid-19 period. Such statement should be judged from the standards of reasonable, strong-minded

and courageous men. The perspective of weak and vacillating minds cannot be considered.

On close analysis of the compliant, the allegations made in it do not constitute an offence punishable under Section 506 of I.P.C. Therefore, the very registration of crime against the petitioner for the offence punishable under Section 506 of I.P.C. is abuse of process of law. On this ground, the Court can quash the proceedings against the petitioner for the offence punishable under Section 506 of I.P.C.

Section 188 of I.P.C. deals with punishment for disobedience to order duly promulgated by public servant. Here, there is absolutely nothing to show an ordinance was promulgated by any public servant and it is in force in the area where respondent No.4 resided. However, there is a clear bar under Section 195 (1) (a) of Cr.P.C. from taking cognizance by the police.

Section 195 of Cr.P.C. deals with prosecution for contempt of lawful authority or public servants, for offences against public justice and for offence relating to documents given in evidence. As per Section 195 (1) (a) (i) of Cr.P.C. no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of I.P.C., except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Therefore, the complaint must be lodged by a public servant, who promulgated the order or by a person, administratively subordinate to him. Here, there is absolutely no complaint from public servant, on the other hand respondent No.4 is not a public servant. When the police registered a crime without compliance of Section 195 (1) (a) (i) of Cr.P.C., it would

vitiating the prosecution since compliance of Section 195 (1) (a) (i) of Cr.P.C. is mandatory in view of the law declared by the Apex Court in "**C.Muniappan Vs. State of Tamil Nadu**"<sup>31</sup>.

Learned Counsel for the petitioner placed reliance on the judgment of Patna High Court in "**Parveen Amanullah v. The State of Bihar**"<sup>32</sup> in support of his contention. The Patna High Court while placing reliance on various judgments viz. "(1) State of U.P. Vs. Mata Bhikh & Others<sup>33</sup>, (2) C.Muniappan Vs. State of Tamil Nadu (referred supra) (3) Pratik Sinha Vs. State of Bihar<sup>34</sup>" held as follows:

"Section 188 of the IPC penalizes disobedience to an order duly promulgated by a public servant, its prerequisite being:-

- (a) Lawful order promulgated by a public servant empowered to promulgate it;
- (b) Knowledge of the order;
- (c) Disobedience of the order; and
- (d) Result that is likely to follow such disobedience i.e. obstruction, annoyance, injury or risk of the same to a person lawfully employed or danger to human health, life or safety or riot affray."

Therefore, to register a crime against a person, who disobeyed the ordinance, there must be a complaint from public servant about the disobedience of ordinance. Hence, the very registration of crime for the offence punishable under Section 188 of I.P.C. is contrary to the settled law laid down by the Apex Court and other High Courts (referred supra) and the police officer is incompetent to register a crime for the offence punishable under Section 188 of I.P.C. on the complaint of any other person other than a public servant and any

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<sup>31</sup> AIR 2010 SC 3718

<sup>32</sup> 2017(3)PLJR101

<sup>33</sup> (1994) 4 SCC 95

<sup>34</sup> 2016 (4) PLJR 274

other person, who is authorized by public servant. Consequently, registration of crime against the petitioner is vitiated by irregularity.

The other offence allegedly committed by the petitioner is punishable under Section 54 of the Disaster Management Act, which reads as follows:

*“54. Punishment for false warning.—Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic, shall on conviction, be punishable with imprisonment which may extend to one year or with fine.”*

Admittedly, the person who committed the offence under Section 54 of Disaster Management Act shall be punishable with imprisonment which may extend to one year or with fine and it is non-cognizable offence. Based on the complaint of respondent No.4, Police cannot register a crime in view of the bar contained in Section 60 of the Disaster Management Act. As per Section 60 of the Disaster Management Act, no court shall take cognizance of an offence under this Act except on a complaint made by (a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or (b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid. Section 60 of the Disaster Management Act is almost identical to Section 195 (1) of Cr.P.C., non-compliance of the same vitiates the entire F.I.R. Hence, registration of crime for the offence

punishable under Section 54 of the Disaster Management Act against the petitioner based on the complaint of respondent No.4 is a grave illegality by abusing process of law.

As I have highlighted the prime duties of the police, either Criminal Investigation Department or Law and Order, the prime duty of the police is to protect the public from law breakers. But, here the police themselves by abuse of law registered crime against this petitioner for various offences, though the allegations made in the complaint do not attract any of the offences punishable under Section 505(2) and Section 506 I.P.C. The other two offences cannot be investigated by the third respondent except on the complaint lodged by the competent person, as discussed above. It is evident from the action of the third respondent in registering and investigating into it, in seizing the electronic equipment from the office of first respondent is nothing but exhibiting over enthusiasm by the third respondent officials to please the political party in power. The third respondent officials are the permanent officials working under the control of State Government irrespective of the political party in power. The parties may come into power and lose power after sometime, but the officer shall continue to work irrespective of the party in power. But, registration of power by abusing process of law is a matter of serious concern, as it causes incalculable damage not only to the life and liberty of this petitioner but also to his business directly violating the fundamental right guaranteed under Articles 19 and 21 of the Constitution of India. I, therefore hold that the action of the third respondent is nothing but abuse of process of law in registering crime against the petitioner believing the allegations made in the complaint on their face value as

true, the Court can exercise power to quash the proceedings by exercising power under Article 226 of the Constitution of India, which is identical to the power under Section 482 of Cr.P.C.

In “***State of Haryana Vs. Ch.Bhajan Lal***<sup>35</sup>” the Apex Court considered in detail the powers of High Court under Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no

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<sup>35</sup> 1992 Supp (1) SCC 335

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Applying the said principles to the present facts of the case, I find that the allegations made in the complaint on their face value do not constitute any of the offences punishable under Sections 505 (2) and 506 of I.P.C. and under Section 188 of I.P.C., besides that registration of crime against the petitioner for the offence punishable under Section 188 of I.P.C. is in violation of Section 195 (1) (a) (i) of Cr.P.C. Similarly, registration of crime for the offence punishable under Section 54 of the Disaster Management Act is in violation of Section 60 of the Disaster Management Act. Consequently, I am of the considered view that the registration of crime against the petitioner for the offences (referred supra) is illegal, arbitrary and violative of Articles 14, 19 (1) (a) and 21 of the Constitution of India.

In the result, the writ petition is allowed declaring the action of respondent No.3 in registering a case in Crime No.20 of 2020 dated 29.04.2020 by the Station House Officer, CID Police Station, Mangalagiri, Guntur District, Andhra Pradesh against the petitioner for the offences punishable under Sections 188, 505 (2) and 506 of

I.P.C. and Section 54 of the Disaster Management Act, 2005 on the basis of the complaint lodged by respondent No.4 as illegal, arbitrary and abuse of process of law; consequently, the proceedings in Crime No.20 of 2020 dated 29.04.2020 on the file of the Station House Officer, CID Police Station, Mangalagiri, Guntur District, Andhra Pradesh are hereby set aside. The property seized during investigation shall be returned to the petitioner within a week from today, if the property is not required in any other crime. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

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**JUSTICE M. SATYANARAYANA MURTHY**

26.08.2020  
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Note: L.R. Copy to be marked.  
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