

From,

Registrar General
High Court of Uttarakhand,
Nainital.

To,

All the District & Sessions Judges,
Uttarakhand.

C. L. No. 26 /UHC/Admin.B/v-a-11/2026, Dated: 24.09.2026

Sub: Circulation of Directions of Hon'ble Supreme Court regarding Cases of 'Hate Speech' and 'Rumour-mongering'.

Sir/Madam,

On the subject above, Hon'ble Supreme Court in its order dated 29.04.2026 passed in Writ Petition (Civil) No. 943 of 2021 titled as "*Ashwini Kumar Upadhyay vs. Union of India & Ors.*" and other connected matters, has been pleased to issue various directions, in which the law relating to 'hate speech' and 'rumour mongering', more particularly the procedural laws contained in the Code of Criminal Procedure, 1973 and BNSS have been elaborated/explained in the detail. Some relevant paragraphs of order of Hon'ble Supreme Court are quoted hereunder for the ready reference:

"48. The scheme of the CrPC makes a clear and conscious distinction between cognizable and non-cognizable offences. In respect of cognizable offences, the police are vested with the power to register the case, arrest without warrant, and proceed with investigation without prior judicial sanction. On the other hand, in cases of non-cognizable offences, Section 155 of CrPC (Section 174 of BNSS) requires prior authorization of the Magistrate before any investigation can be undertaken. This distinction reflects the legislative intent to ensure immediacy of action in serious offences affecting public order and safety."

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"50. The issue whether registration of an FIR is mandatory upon disclosure of a cognizable offence is no longer res integra. This Court in Lalita Kumari (supra) has conclusively held that the statutory scheme of CrPC leaves no discretion with the police in such cases and mandates registration of an FIR. This Court further clarified that no preliminary enquiry is permissible to test the veracity or credibility of the information before registration."

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"52. Equally significant is the fact that the CrPC itself provides a comprehensive set of remedies in cases where the police fail or refuse to register an FIR despite disclosure of a cognizable offence.

53. In the first instance, Section 154(3) of CrPC (Section 173 of BNSS) enables an aggrieved person to approach the Superintendent of Police by submitting the substance of such information. Upon being satisfied that the information discloses the commission of a cognizable offence, the Superintendent of Police may either undertake the investigation himself or direct an investigation to be conducted by a subordinate officer.

54. In addition, the remedy under Section 156(3) of CrPC (Section 175 of BNSS) confers supervisory powers upon the Magistrate. Section 156(3) of CrPC empowers the Magistrate to direct registration of an FIR and investigation by the police. This Court in Madhu Bala v. Suresh Kumar,(1997) 8 SCC 476 clarified that the power to order investigation under Section 156(3) implicitly includes the power to direct registration of a case."

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113. This Court, in Mohd. Yousuf v. Afaq Jahan, (2006) 1 SCC 627 examined in extenso the distinction between "taking cognizance" and "ordering investigation" under the CrPC. The Court clarified the conceptual and procedural interplay between these two stages and delineated the scope of the Magistrate's powers under

Section 156(3) vis-à-vis Section 190 of CrPC. The relevant observations of the judgment are reproduced hereunder: -

"8. The various steps to be adopted for investigation under Section 156 of the Code have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer in charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The investigation contemplated in that chapter can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.

9. But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code.

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118. In *Lalita Kumari (supra)*, while affirming the mandatory nature of registration of an FIR upon disclosure of a cognizable offence, this Court carved out limited categories where a preliminary inquiry may be conducted prior to registration, namely matrimonial or family disputes, commercial offences, medical negligence

cases, corruption cases, and cases involving abnormal delay or laches in initiating prosecution.

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121. A coordinate Bench of this Court in *State of Karnataka v. Pastor P. Raju* (2006) 6 SCC 728, had occasion to consider the stage at which prior sanction becomes necessary under CrPC. The Court categorically held that there is no embargo on the registration of a criminal case, the conduct of investigation by the police, or the submission of a report under Section 173 of CrPC in the absence of prior sanction.

122. The requirement of sanction, this Court clarified, operates at the stage of taking cognizance by the Court and not at the anterior stage of investigation.

124. A cumulative reading of the principles laid down in *Pastor P. Raju* (supra) and *Sakiri Vasu* (supra) makes the legal position abundantly clear that an order passed by a Magistrate under Section 156(3) of CrPC does not amount to "taking cognizance" of an offence within the meaning of Section 190 of CrPC.

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164. For the foregoing reasons and discussion, our conclusions are summarised as follows:-

I. The creation of criminal offences and the prescription of punishments lie squarely within the legislative domain. The constitutional scheme, founded upon the Doctrine of Separation of Powers, does not permit the judiciary to create new offences or expand the contours of criminal liability through judicial directions.

II.

III. The contention that the field of hate speech remains legislatively unoccupied is misconceived. The existing framework of substantive criminal law, including the provisions of the IPC and allied legislations, adequately addresses acts that promote enmity, outrage religious sentiments, or disturb public tranquillity. The field is, therefore, not unoccupied.

IV. The material placed before this Court indicates that a greater extent of the concerns highlighted by the petitioners arise not from the absence of law, but from deficits in its consistent and effective enforcement. Such concerns, however significant, cannot justify the judicial assumption of legislative functions.

V. The statutory framework under the CrPC (now the Bharatiya Nagarik Suraksha Sanhita, 2023), provides a comprehensive and layered mechanism to set the criminal law in motion. The duty of the police to register an FIR upon disclosure of a cognizable offence is mandatory, as settled in Lalita Kumari (supra).

VI. In cases of non-registration of FIR, the CrPC/BNSS provide efficacious remedies. An aggrieved person may approach the Superintendent of Police under Section 154(3) of CrPC or corresponding Section 173(4) of BNSS and thereafter invoke the jurisdiction of the Magistrate under Section 156(3) of CrPC (corresponding Section 175 of BNSS) or proceed by way of a complaint under Section 200 of CrPC (corresponding Section 223 of BNSS). These remedies constitute a complete statutory architecture.

VII.

VIII. The supervisory jurisdiction of the Magistrate under Section 156(3) of CrPC or corresponding Section 175 of BNSS is of wide amplitude and includes supervisory oversight over the investigation at appropriate stages. This power is intended to ensure that the investigation is conducted in a fair, impartial, and lawful manner, and may be exercised simultaneously during the stage of investigation, where the material on record discloses any deficiency, inaction, or taint in the investigative process.

(IX). The requirement of prior sanction under Sections 196 and 197 of CrPC (corresponding Sections 217 and 218 of BNSS) operates at the stage of taking cognizance and does not extend to the pre-cognizance stage of registration of FIR or investigation under Section 156(3)

of CrPC (corresponding Section 175(3) of BNSS). An order directing investigation under Section 156(3) of CrPC does not amount to taking cognizance within the meaning of Section 190 of CrPC (corresponding Section 210 of BNSS).

X.

2. In view of the above, and in compliance of directions of the Hon'ble Supreme Court, I am directed to circulate order of the Hon'ble Supreme Court with the instructions of this Hon'ble Court that the law as explained by the Hon'ble Supreme Court be followed in practice by all the Courts dealing with cases relating to 'hate speech' and 'rumour mongering'.

Yours sincerely,

Encl: As above.

(Yogesh Kumar Gupta)
Registrar General

No. 6126/UHC/Admin.B/v-a-11/2026, Dated: 24.09.2026

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2. All the Private Secretaries to Hon'ble Judges for placing a copy before Their Lordship's Kind perusal.
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5. Principal Judges/Judges Family Court, Uttarakhand,
6. Director, Uttarakhand Judicial & Legal Academy, Bhowali, Nainital.
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