Azadi Ka Amrit Mahotsav

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE: ROHINI COURTS, DELHI

No. 26588-26664 **.Genl.I/F. 3(A)/N-W & N/RC/2023 Delhi, dated** 19/8/2023.

Sub: Judgment dated 21.07.2023 passed by Hon'ble High Court of Delhi in Crl. M.C. No. 1463/2020 & Crl. M.A. 5732/2020 titled " Alok Kumar Vs. Harsh Mander & Anr. "

Letter bearing No. 5888-5900/DHC/Gaz/G-2/Judgment/2023 dt. 16.08.2023 received from Hon'ble High Court of Delhi, along with a copy of Judgment dated 21.07.2023 passed by Hon'ble High Court of Delhi in Crl. M.C. No. 1463/2020 & Crl. M.A. 5732/2020 titled " Alok Kumar Vs. Harsh Mander & Anr. " is being forwarded for information and necessary action/compliance **(through electronic mode)** to:-

1. All the Ld. Judicial Officers **(DHJS & DJS)**, **North-West** and **North** District, Rohini Courts, Delhi.
2. The Personal office, Ld. Principal Distt. & Sessions Judge, **North-West** and **North** District, Rohini Courts, Delhi.
3. The Dealing Official, Computer Branch, Rohini Courts, Delhi for uploading the same on WEBSITE.
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(VINOD YADAV)
District Judge, Comm. Court-02 (N/W)
Officer In-charge, General Branch
North-West & North District
Rohini Courts Complex, Delhi

5888–5900 **IN THE HIGH COURT OF DELHI AT NEW DELHI**

No._____/DHC/Gaz/G-2/Judgment/2023 Dated: 16th August, 2023.

From:

The Registrar General,
High Court of Delhi,
New Delhi-110003.

To,

1. The Principal District & Sessions Judge (HQ), Tis Hazari Courts Complex, Delhi.
2. The Principal District & Sessions Judge (New Delhi), Patiala House Courts Complex, New Delhi.
3. The Principal District & Sessions Judge (North-West), Rohini Courts Complex, Delhi.
4. The Principal District & Sessions Judge (South), Saket Courts Complex, New Delhi.
5. The Principal District & Sessions Judge (South –West), Dwarka Courts Complex, New Delhi.
6. The Principal District & Sessions Judge (West), Tis Hazari Courts Complex, Delhi.
7. The Principal District & Sessions Judge (East), Karkardooma Courts Complex, Delhi.
8. The Principal District & Sessions Judge (South-East), Saket Courts complex, Delhi.
9. The Principal District & Sessions Judge (Shahdara), Karkardooma Courts Complex, Delhi.
10. The Principal District & Sessions Judge (North-East), Karkardooma Courts Complex, Delhi.
11. The Principal District & Sessions Judge (North), Rohini Courts Complex, Delhi.
12. The Principal District & Sessions Judge-cum-Special Judge (PC Act) (CBI), RACC, New Delhi.
13. The Principal Judge (HQ), Family Courts, Dwarka, New Delhi.

Sub: Judgment dated 21.07.2023 passed by Hon'ble High Court of Delhi in Crl. M.C. No. 1463/2020 & Crl. M.A. 5732/2020 titled "Alok Kumar Vs. Harsh Mander & Anr"

Sir/Madam,

I am directed to forward herewith a copy of Judgment dated 21.07.2023 passed by Hon'ble High Court of Delhi in Crl. M.C. No. 1463/2020 & Crl. M.A. 5732/2020 titled "Alok Kumar Vs. Harsh Mander & Anr" with the request to circulate the same amongst all the Judicial Officers working under your respective control for information and necessary compliance.

Yours faithfully,

(Surender Pal)
Deputy Registrar (Gazette-IB)
For Registrar General.

Encl: As Above

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL M.C. NO. 1463 OF 2020

IN THE MATTER OF:

Sh. Alok Kumar ... Petitioner

Versus

Shri Harsh Mander & Anr. ... Respondents

(arising out of order dated 18.02.202 passed by Sh. Gajender Singh Nagar, ACMM-02, Tis Hazai Courts, Delhi)

MEMO OF PARTIES

Shri Alok Kumar
S/o Late Shri S. N. Agarwal
C/o W-99, Greater Kailash Part-I,
New Delhi-110048 ...Petitioner

Versus

1. Sh. Harsh Mander
S/o Sh. Harmander Singh
R/o C-6/ 6233, Ground Floor,
Vasant Kunj, New Delhi

2. STATE
Govt. Of NCT of Delhi
Through Standing Counsel ...Respondents

PETITIONER

THROUGH

Yashvir Sethi (D/801/88)
Manisha Agrawal, Neeraj Gupta & (D/570/2006) (D/336/1976)
Amit Kr. Singh (D/2427/2013)
Advocates
KUMAR GARG & ASSOCIATES
W 99, Greater Kailash-I
New Delhi 110048
Mobile: 9899429611
e-mail: kga.advocates@gmail.com

Delhi
19/3/2020

2023:DHC:5045

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

% ***Reserved on: 10.04.2023***
Pronounced on: 21.07.2023

\+ CRL.M.C. 1463/2020 & CRL.M.A. 5732/2020

ALOK KUMAR ..... Petitioner

Through: Mr. Mohit Mathur, Senior Advocate, with Mr. Abhishek Atrey, Ms. Manisha Agarwal, Mr. Varun Maheshwari, Mr. Amit Kumar Singh, Mr. Manan Soni, Mr. Rahul Madan, Mr. Deepak Mittal, Mr. Rabi Kumar, Mr. Divyansh Vajpayee, Ms. Rakshita Goyal, Mr. Sandeep Singh, Mr. Ajay Saini and Mr. Sumit Mishra, Ms.Nirmala Singh and Mr. Harsh Gautam, Advocates

versus

HARSH MANDER & ANR. ..... Respondents

Through: Mr. Daniyal Khan, Advocate for R-1
Mr. Satish Kumar, APP for the State with Inspector Amit Kumar, P .S. Hauz Qazi

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

Index to the Judgment

SWARANA KANTA SHARMA, J.

1. This petition has been filed on behalf of petitioner under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter 'Cr.P.C.'*) seeking indulgence of this Court for quashing of impugned order dated 18.02.2020, whereby the Station House Officer (*hereinafter 'SHO'*), Police Station Hauz Qazi, Delhi was directed to register an FIR under appropriate sections of law on the basis of complaint filed by respondent no. 1. The petitioner is aggrieved that the complaint was purely malicious and motivated questioning his patriotism and injuring his reputation without any reason and prays that this Court not only examine the same but also initiate proceedings under Section 182 Cr.P.C. against respondent no. 1.

2. By way of this judgment, this Court aims to examine the issue at the core of the petition i.e. whether the order passed under Section 156(3) Cr.P.C. directing registration of the FIR merits quashing or not.

FACTUAL BACKDROP

3. Briefly stated, the story narrated in the application filed under Section 156(3) Cr.P.C. by respondent no. 1 was in the backdrop of an incident that allegedly took place on 01.07.2019 at 12:34 AM, when a PCR call was received regarding a quarrel that had taken place at Mandir Wali Gali, Lal Kuan, Hauz Qazi, Delhi on the issue of parking. The police upon reaching the spot, had found that some Muslim youth had broken the glass windows and idols of Hindu Gods and Goddesses at Durga Mandir, Lal Kuan Hauz Qazi, Delhi and had gathered outside

the temple for raising pro-Islam slogans. Consequently, the police had registered an FIR bearing no. 90/2019 at P.S. Hauz Qazi on 01.07.2019, initially under Sections 147/148/149/295/34 of Indian Penal Code, 1860 (*hereinafter 'IPC'*), and subsequently, Sections 186/353/332/153A(2)/ 436 of IPC were also incorporated into the same FIR. During the course of investigation, a total of 18 accused, including 09 Children in Conflict with Law (CCL), were arrested/ apprehended.

4. The grievance of the respondent no. 1, however, relates to an incident dated 09.07.2019, which allegedly took place on the occasion of '*Pran Pratishtha*' of idols of Hindu Gods and Goddesses. As per respondent no. 1, a public meeting had been organised by Vishwa Hindu Parishad at Lal Kuan Hauz Qazi, Delhi, where one Swami ji (identity unknown) had come to Delhi from Kashi and had delivered a speech, alleged to be provocative and being the centre of entire controversy in the present case.

5. Affronted by the abovesaid speech, respondent no. 1 had filed a complaint with the concerned SHO, with a copy to Deputy Commissioner of Police, Daryaganj as well as to Commissioner of Police, whereby he had alleged that the remarks made by unknown Swami ji in his speech delivered on 09.07.2019 were *prima facie* covered under the ambit of Sections 153, 153A and 153B of IPC, being comments designed to provoke riots; promote enmity and ill-will between communities as well as being comments prejudicial to national integration. It was also alleged that the comments made by Swami ji were intended to outrage the religious sentiments of Muslim community, an act which is punishable under Section 205 of IPC. It was

further alleged that since the statements were conducive to causing public mischief being statements intended to cause alarm to the public as well as intending to incite members of one community to commit violence against members of another community, the actions were covered under Section 505(1)(b) and 505(1)(c) of IPC. It was alleged that Section 505(2) would also be applicable as the alleged hate speech was likely to promote enmity and ill-will between two different religious communities, and that the actions so committed would also fall under Section 506 since a particular religious community had been criminally intimidated by way of the speech.

6. As per respondent no. 1, the concerned police officials had failed to take any action against the accused persons on the complaint lodged by him in respect of the aforesaid incident.

7. Respondent no. 1 had also filed an application under Section 156(3) of Cr.P.C. seeking registration of FIR against proposed accused no. 1 and 2, i.e. present petitioner and one Swami ji from Kashi respectively, on the ground that the unknown Swami ji had delivered a hate speech against Muslim community on 09.07.2019 in a gathering organised by Vishwa Hindu Parishad and had committed offences punishable under Sections 153, 153A, 153B and 503 of IPC. It was also alleged that the present petitioner was the International Working President of Vishwa Hindu Parishad, which had organised the public meeting.

8. Upon receiving complaint and application under Section 156(3) Cr.P.C., the learned Metropolitan Magistrate-08, Central, Tis Hazari Courts, Delhi *vide* order dated 16.10.2019 had directed the SHO

concerned to file Status Report/Action Taken Report, in terms of Section 154(1) and 154(3) Cr.P.C. and a copy of the said order was sent to DCP concerned as well for ensuring compliance. The report was sought containing specific answers to the following questions:

> "...1. Whether any complaint had been made by the complainant in the police station concerned.
>
> 2. If yes, whether any action has been taken by the police on the said complaint, if yes, what action has been taken.
>
> 3. Whether as a result of any investigation/inquiry, any cognizable offence has been made out against the accused person/s and whether any action has been taken by the police.
>
> 4. If yes, whether any FIR has been registered and the stage/status of investigation.
>
> 5. If no cognizable offence has been made out, whether the complainant had been informed accordingly..."

9. In compliance of the aforesaid order, Additional DCP, Central District, Delhi had filed a report dated 25.11.2019 whereby the above questions were answered as under:

> "...With reference to above mentioned Order, it is submitted that a report into the matter has been obtained from ACP/ Kamla Market. As per the report received from ACP/ Kamla Market the point wise reply is as under:-
>
> 1. Yes, complaint of complainant was received at PS Hauz Qazi.
>
> 2. The preliminary enquiry was got conducted at PS Hauz Qazi.
>
> 3. As per enquiry, no cognizable offence was made out into the matter.
>
> 4. No FIR has been registered in view of above.
>
> 5. Yes, the complainant has been informed accordingly by SHO/Hauz Qazi.
>
> The detailed report of ACP/Kamla Market is enclosed herewith for kind perusal. SHO/Hauz Qazi has been directed to attend the Ld. Court on 26.11.2019 to apprise all the facts..."

10. A detailed Action Taken Report/Status Report was also filed by the police before the concerned Magistrate on 26.11.2019. As per the said report, pursuant to receipt of complaint lodged by respondent no. 1, the police had conducted a preliminary inquiry and during the course of same, the police had gone through the contents of the alleged hate speech and had found that the proposed accused i.e. Swami ji from Kashi had not uttered any word against any religious community, and had only expressed his thoughts and views, while also referring in a chronological order to some previous incidents which had taken place in the country. It was further reported by the police after inquiry that even after hearing the said speech, no person was provoked in the locality or outside the locality and all the residents of both communities were living peacefully in communal harmony in the locality. The police further reported that following this incident, various other religious programs and rallies were organised in the locality, including events on Id-ul-zuha, Ganesh Visarjan, Ram Barat, Muharram Jaloos, Diwali, Millad-un-Nabi Jaloos, among others, and none of these gatherings had resulted in any untoward incident. Statements of many local residents were also recorded by the police during inquiry qua the said speech and none of the residents or witnesses had agreed with the version given by respondent no. 1 that any ill-will or enmity had been caused between the two communities due to the speech delivered by Swami ji. Accordingly, it was reported by the police after due inquiry that no offence was made out against any person on the basis of complaint filed by respondent no.

1. Further, in response to the questions raised by the learned Magistrate vide order dated 16.10.2019, the following answers were provided:

> "1. Yes. complainant filed a complaint at police Station Hauz Qazi Delhi.
>
> 2. Yes, enquiry was conducted, it was found that no cognizable offence was made out. Hence the complaint was filed.
>
> 3. During enquiry no cognizable offence is made out against the alleged persons. Hence no action was taken against the alleged persons.
>
> 4. No FIR was registered.
>
> 5. Yes, Complainant has informed regarding Status of his complaints."

11. Thereafter, the learned Additional Chief Metropolitan Magistrate-02, Central, Tis Hazari Courts, Delhi (*hereinafter 'learned Magistrate'*) *vide* order dated 18.02.2020 had directed the concerned SHO to register an FIR against proposed accused persons, including the present petitioner, under appropriate provisions of law. The order dated 18.02.2020, impugned before this Court reads as under:

> "1. Vide this order the undersigned shall decide an application U/s 156(3) Code of Criminal Procedure.
>
> 2. Record perused. Arguments heard. The facts alleged revealed commission of a cognizable offence, hence police is duty bound to register an FIR.
>
> 3. In view of landmark five judges bench judgments of Hon'ble Supreme Court, in case titled **Lalita Kumari v. Govt. of U.P. & Ors. (dated 12th Nov, 2013)**, it is a settled principle of law that the police is bound to lodge an FIR, as and when a complaint alleging cognizable offence is made out to police. Following is the guideline laid down in this case:
>
> i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable

offence and no preliminary inquiry is permissible in such a situation.

5. In view of the same, the application of the applicant is allowed and SHO concerned is directed to register the present complaint under appropriate section of law without being influenced by the section mentioned in the complaint and take up the investigation.

6. It is, however, made clear that this order is no direction to SHO to immediately arrest the accused. The police should first investigate the matter and find out whether actually any offence has been committed or not. The investigating officer may arrest the accused only if the circumstances so warrants. It be seen that there is sufficient material for the arrest of accused persons, as it is a settled law that power to arrest is different from justification to do so. Reference may be made to (**Court on its Motion Vs. CBI Volume 109 (2004) DLT page 494**). It is also relevant to note that in **Joginder Kumar vs. State of U.P. & Ors. (1994) 4 SCC 260,** Hon'ble Supreme Court has held that arrest cannot be made by police in a routine manner. Some important observations are reproduced as under:-

> "No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should he made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the persons complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do."

7. While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts under the law, and there are several safeguards available against arrest.

> 8. With above stated observations SHO concerned is directed to register the present complaint under appropriate section of law. After completion of investigation, the SHO is to file final report or charge sheet under section 173(2) Cr. P.C as per result of investigation.
>
> 9. It is hereby made clear that police has to conduct the investigation in impartial and fair manner to unearth the truth. It is further made clear that if allegations found false, appropriate action may be taken against the complainant."

12. Aggrieved by the aforesaid order, the petitioner i.e. proposed accused no. 1 had preferred the above-captioned petition, and this Court *vide* order dated 20.03.2020 had stayed the operation of impugned order dated 18.02.2020.

13. In reply to the present petition, the State has filed a Status Report whereby the contents of the Action Taken Report (ATR) and the details of initial inquiry conducted by the police have been reiterated.

ARGUMENTS OF THE PETITIONER

14. Sh. Mohit Mathur, learned Senior Counsel for the petitioner states that the petitioner, who is a Senior Advocate by profession and has been practising law for last 44 years, has been mischievously arraigned as accused no. 1 by respondent no. 1 with malafide intention in his complaint and application filed under Section 156(3) Cr.P.C. It is argued by learned Senior Counsel that the complaint filed by respondent no. 1 emanates from an alleged hate speech attributed to one Swami ji, who had allegedly travelled from Kashi to Delhi on 09.07.2019, subsequent to the episode of vandalism of idols of Hindu Gods and Goddesses at the temple situated at Lal Quan, Hauz Qazi, Delhi on

01.07.2019. It is argued that no untoward incident had taken place subsequent to the delivery of the alleged hate speech on 09.07.2019. It is further argued that learned Magistrate, without application of mind and in utmost casual manner, has issued direction for registration of FIR under appropriate sections of law against the proposed accused persons including present petitioner and for filing final report or chargesheet under Section 173(2) Cr.P.C.

15. It is argued by Sh. Mathur that the learned Magistrate has failed to appreciate that respondent no. 1 had not levelled any allegations against the petitioner in the entire complaint and application under Section 156(3) Cr.P.C., except a single line that petitioner was the International Working President of Vishwa Hindu Parishad i.e. the organisation which had organised the public meeting on 09.07.2019. It is stated that it is not the case of respondent no. 1 that the present petitioner had organised the public meeting on 09.07.2019 or was present there or had given any provocative speech therein. It is argued that the factum of petitioner being Working President of Vishwa Hindu Parishad does not constitute any criminal offence and that principle of vicarious liability is not applicable on criminal acts, unless such vicarious liability has been specifically provided for by law. It is argued that even if for the sake of argument, it is assumed that the organisation i.e. Vishwa Hindu Parishad was responsible for organising the public gathering in which the alleged speech was delivered by one Swami Ji from Kashi, the petitioner cannot be implicated in this case on account of any act or alleged speech made by a third party. Further, learned Senior Counsel argues that on the day of alleged incident, the petitioner

was present before this Court in connection with his appearance in several cases and his appearance has been recorded in several order sheets of 09.07.2019.

16. Learned Senior Counsel further argues that no cognizable offence is made out against the petitioner even from a bare reading of the complaint, and the learned Magistrate did not record its satisfaction about commission of any cognizable offence and failed to take note of the status report dated 26.11.2019 filed by the police through which the Court was informed that no cognizable offence was disclosed upon conclusion of preliminary inquiry conducted by the police on the initial complaint filed by respondent no. 1.

17. It is further argued by Sh. Mohit Mathur that the learned Magistrate did not appreciate that respondent no. 1 is a virulent campaigner against the organisation of which the petitioner is a part of, and he had filed a politically motivated complaint with ulterior motives in order to falsely implicate the petitioner and gain publicity through such acts. It is stated that filing of such frivolous and motivated complaint, with an intent to malign an organisation and a community, is an abuse of process of law and must be dealt with stern hands.

18. Learned Senior Counsel for petitioner also argues that the present case lacks compliance with the statutory requirements of Section 154(3) Cr.P.C., which has been deemed indispensable and held to be a *sine qua non* for issuance of directions under Section 156(3) Cr.P.C.

19. It is also argued that on one hand, in paragraph 6 of the impugned order, learned Magistrate has directed the police to first investigate and find out as to whether any cognizable offence has actually been

committed or not, however on the other, a direction has been issued to register FIR since cognizable offences were made out against the proposed accused persons, though without mentioning as to what offences were made out and how.

20. Sh. Mohit Mathur further argues that respondent no. 1 had no *locus standi* to initiate criminal proceedings against the petitioner, since respondent no. 1 was neither present at the place of occurrence where the alleged hate speech was delivered nor had he shown any reasons for initiating criminal proceedings that have culminated into the impugned order.

21. It is also argued by learned Senior Counsel that several judgments passed by the Hon'ble Supreme Court as well as this Court have held that criminal proceedings may be partially quashed/set aside against persons who are not related to the commission of offence(s) as alleged in a complaint, and the present case is a fit case for partial quashing of proceedings pending against the petitioner as he has no role or involvement in the incident dated 09.07.2019.

ARGUMENTS OF THE RESPONDENTS

22. Learned counsel for respondent no. 1 states that the present controversy relates to one hate speech delivered by a Swami ji who had come from Kashi in a public meeting which was organised by Vishwa Hindu Parishad. It is argued that petitioner was the International Working President of Vishwa Hindu Parishad, the organisation which had organised the public meeting on 09.07.2019 where accused no. 2

i.e. Swami Ji had delivered a hostile speech against a minority community.

23. It is also argued that the statements made in the said speech violate Sections 153, 153A, 153B and 503 of IPC as they make direct threats of violence against one religious community, encourages another religious community to take law into their own hands through violent means in order to deal with alleged threats raised by the other religious community, and also threatens and criminally intimidates one religious community. It is also stated that the speech clearly indicates the intention of the speaker to cause incitement and disruption of harmony between the two largest religious communities in India and seeks to encourage people to riot and disregard constitutional norms and principles. It is stated that the *mens rea* of the accused in promoting enmity between communities is evident from the wordings of the speech itself.

24. It is further argued by learned counsel that Hon'ble Apex Court in ***Tehseen S. Poonawalla v. Union of India*** *(2018) 9 SCC 501* and ***Kodungallur Film Society v. Union of India*** *(2018) 10 SCC 713* has issued several directions to deal with crimes of similar nature.

25. Learned APP for the State/respondent no. 2 argues that there is no infirmity with the impugned order, and the grounds being raised on behalf of the petitioner at this stage, cannot be adjudicated upon by this Court and the police must be permitted to investigate the case in terms of order passed by the learned Magistrate.

26. The arguments addressed on behalf of both sides have been heard and material on record has been carefully perused.

WHEN CAN A MAGISTRATE DIRECT REGISTRATION OF FIR

27. While deciding this case, this Court had the occasion to re-visit the jurisprudence of Section 156(3) Cr.P.C. and examine as to how the power under Section 156(3) Cr.P.C. needs to be exercised.

I. Law of Section 156(3) Cr.P.C.

28. At the outset, a reference can be made to Section 156 Cr.P.C., which reads as under:

> "156. Police officer's power to investigate cognizable case.—
>
> (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
>
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
>
> (3) **Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.**"
>
> (Emphasis supplied)

29. The Hon'ble Apex Court in case of ***Priyanka Srivastava v. State of Uttar Pradesh*** *(2015) 6 SCC 287* had discussed the law of Section 156(3) Cr.P.C. Some of the relevant portion of the said decision is extracted as under:

> "20. The learned Magistrate, as we find, while exercising the power under Section 156(3) Cr.P.C. has narrated the allegations and, thereafter, without any application of mind, has passed an

order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156(3) Cr.P.C., cannot be marginalized. To understand the real purport of the same, we think it apt to reproduce the said provision:

> "156. Police officer's power to investigate cognizable case. (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was no empowered under this section to investigate.
> (3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

21. Dealing with the nature of power exercised by the Magistrate under Section 156(3) CrPC, a three-judge Bench in Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, had to express thus: (SCC p. 258, para 17)

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

***

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the

> Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.
>
> 31. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law..."

30. This Court in ***Subhkaran Luharuka v. State*** *2010 SCC OnLine Del 2324* had discussed the nuances of Section 156(3) Cr.P.C. at length and had laid down certain guidelines for exercise of this power. The relevant observations read as under:

> "22. The questions which arise for consideration are:—
>
> (i) How and when powers under Section 156(3) of the Code are to be exercised by the Metropolitan Magistrate?
> (ii) Whether the complaint instituted under Section 200, the order dated 1.7.2005 passed under Section 156(3) of the Code and also the FIR No. 436/2005 dated 6.8.05 of PS Defence Colony New Delhi registered pursuant to the aforesaid order, are liable to be quashed in exercise of powers vested in this Court under Section 482 of the Code in the peculiar facts of this case?
>
> ***
>
> 39. A Division Bench of the Karnataka High Court in *Guruduth Prabhu v. M.S. Krishna Bhat, 1999 Crl. L.J. 3909* has also discussed the issue in detail both in the context of Chapter XII and XV of the Code. The relevant paragraphs reads as under:—
>
> 10. Let us first consider whether the learned Magistrate had jurisdiction to refer the matter for Police investigation under Section 156(3), Cr. P.C.
>
> Sub-section (1) of Section 156 confers on the police unrestricted power to investigate a cognizable offence without

the order of a Magistrate or without a formal first information report. The police are entitled to investigate cognizable offence either on information under Section 154 or on their own motion, on their own knowledge or from other reliable information. This statutory right to investigate cognizable offence cannot be interfered with or controlled by the Courts including the High Court. It is open to the Court to take or not to take action when the police prefer a chargesheet after investigation. But the Court's function does not begin until the chargesheet is filed. Under Sub-section (2) police can investigate any offence taking the matter to be a cognizable offence although ultimately charges are filed for a non-cognizable offence since while investigating a cognizable offence, the police are not debarred from investigating any non-cognizable offence arising out of the same facts and including it in the report to be filed by them under Section 173, Cr. P.C.. Sub-section (3) empowers the Magistrate to refer and direct the police to investigate a cognizable offence. But there is a restriction on the Magistrate before directing the police to investigate under Sub-section (3), the Magistrate should form an opinion that the complaint filed by the complainant before him disclose a cognizable offence. When the allegation made in the complaint does not disclose cognizable offence, the Magistrate has no jurisdiction to order police investigation under Sub-section (3). In the present case, the learned Magistrate without applying his mind had directed an investigation by the police. Such an order which is passed without application of mind is clearly an order without jurisdiction. Therefore, the order passed directing the police to investigate under Sub-section (3) of Section 156, Cr. P.C., passed without jurisdiction is liable to be quashed by this Court either under Section 482, Cr. P.C., or under Article 226 of the Constitution of India. We find from the materials on record, the learned Magistrate has not at all applied his mind before directing police investigation under Section 156(3), Cr. P.C. If the Magistrate had applied his mind, the Magistrate could have found that no cognizable offence is made out even if the entire allegations made in the complaint are accepted. We have already come to the conclusion that none of the complaints filed by the complainants disclose a cognizable offence alleged under Section 167, IPC. On this count alone the direction given by the Magistrate is liable to be quashed. The Hon'ble Supreme Court in State of Haryana v. Bhajan Lal, 1992 Cri. LJ 527 has held that the High Court could either exercise its power under Article 226 of the Constitution

of India or under Section 482, Cr. P.C. and quash the investigation to prevent abuse of the process of law or to secure the end of justice.

11. Sub-section (3) of Section 156 Cr. P.C. empowers Magistrate to order an investigation. Under Section 157(1), Cr. P.C. an officer in charge of a Police Station having reason to suspect the commission of an offence which he is empowered under Section 156, Cr. P.C. to investigate should send a report to the Magistrate empowered to take cognizance of the offence upon a Police report and should proceed in person or depute one of his prescribed deputies to proceed to the spot to investigate under Section 157(1)(a) when the offender is named and if the case is not of a serious nature the officer need proceed in person or depute his subordinate. Under Section 157(1)(b) if it appears to such Police Officer that there is no sufficient ground for entering on an investigation he shall not investigate the case and the officer should inform the complainant under the prescribed manner. Thus, the Police Officer who is empowered to investigate on the information received by him of the commission of a cognizable offence can decide whether there is no sufficient ground for entering into an investigation and if there is no sufficient ground he should not investigate the case. But once the Magistrate orders an investigation under Section 156(3), Cr. P.C. the Police Officer is bound to investigate the matter and there is no question of his deciding not to investigate. Thus, by an order of the Magistrate under Section 156(3) the discretion given to the Police Officer under Section 157 is taken away. It is therefore very important that the Magistrate applies his mind and finds that the allegations made in the complaint filed under Section 200, Cr. P.C. before him discloses an offence. If every complaint filed under Section 200, Cr. P.C., is referred to the police under Section 156(3) without application of mind about the disclosure of an offence, there is every likelihood of unscrupulous complainants in order to harass the alleged accused named by them in their complaints making bald allegations just to see that the alleged accused are harassed by the police who have no other go except to investigate as ordered by the Magistrate. Therefore, it is mandatory for the Magistrate to apply his mind to the allegations made in the complaint and in only cases which disclose an offence, the Magistrate gets jurisdiction to order an investigation by the police if he does not take cognizance of the offence.

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52A. For the guidance of subordinate courts, the procedure to be followed while dealing with an application under Section 156(3) of the Code is summarized as under:-

(i) Whenever a Magistrate is called upon to pass orders under Section 156(3) of the Code, at the outset, the Magistrate should ensure that before coming to the Court, the Complainant did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the Complainant. It should also be examined what action was taken by the SHO, or even by the senior officer of the Police, when approached by the Complainant under Section 154(3) of the Code.

(ii) The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is permissible even by an SHO and if no such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him.
Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing, a status report by the police is to be called for before passing final orders.

(iii) The Magistrate, when approached with a Complaint under Section 200 of the Code, should invariably proceed under Chapter XV by taking cognizance of the Complaint, recording evidence and then deciding the question of issuance of process to the accused. In that case also, the Magistrate is fully entitled to postpone the process if it is felt that there is a necessity to call for a police report under Section 202 of the Code.

(iv) Of course, it is open to the Magistrate to proceed under Chapter XII of the Code when an application under Section 156(3) of the Code is also filed along with a Complaint under Section 200 of the Code if the Magistrate decides not to take cognizance of the Complaint. However, in that case, the Magistrate, before passing any order to proceed under Chapter

> XII, should not only satisfy himself about the pre-requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant, and the matter is such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code."

II. Essential Pre-conditions While Directing Registration of FIR under Section 156(3)

(i) Disclosure of Cognizable Offence

31. While exercising powers under Section 156(3) Cr.P.C. and directing the registration of an FIR, the Magistrate needs to ensure that a cognizable offence is disclosed from the allegations mentioned in the application and the essential elements of the alleged offences thereof are *prima facie* satisfied.

32. In the case of ***Usha Chakraborty v. State of West Bengal*** *2023 SCC Online SC 90,* it has been recently held by Hon'ble Apex Court that while passing an order for registration of an FIR upon an application filed under Section 156(3) Cr.P.C., the Court must satisfy itself that basic ingredients of the alleged offences are fulfilled. The relevant observations in this regard read as under:

> "...there cannot be any doubt with respect to the position that **in order to cause registration of an F.I.R.** and consequential investigation based on the same the petition filed under Section 156(3), Cr.P.C., **must satisfy the essential ingredients to attract the alleged offences.** In other words, **if such allegations in the petition are vague and are not specific with respect to the**

> **alleged offences it cannot be lead to an order for registration of an F.I.R. and investigation** on the accusation of commission of the offences alleged..."
>
> (Emphasis supplied)

33. In ***Pandharinath Narayan Patil v. State of Maharashtra*** *2015 SCC OnLine Bom 882*, the Hon'ble High Court of Bombay had expressed that the Magistrate in exercise of powers under Section 156(3) Cr.P.C. must see as to whether essential ingredients of cognizable offences are disclosed from the allegations levelled in the application or not. The relevant observations read as under:

> "15. **It is thus well settled that the powers under section 156(3) of the Code cannot be exercised mechanically but are required to be exercised judiciously.** The magistrate is not required to embark upon an in-depth roving enquiry as to the reliability or genuineness of the allegations, **nonetheless, he has to arrive at a conclusion that the application discloses necessary ingredients of the offence for which investigation is intended to be ordered.** Furthermore, the reasons for arriving at such conclusion should be clearly reflected in the order.
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> ***
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> 26. A perusal of the order dated 2.12.2014 clearly reveals that the learned Magistrate has not made any endeavor to ascertain whether the application purported to be under section 156(3) Cr.P.C. disclosed any cognizable offence. **On the contrary, the order reveals that the learned Magistrate has ordered investigation only because "the complainant has alleged about the cognizable offence against the concerned PI of Kharghar Police Station." Suffice it to state that in exercising powers conferred under section 156(3) Cr.P.C., the court cannot act as a post office and transmit every application for investigation.** The legal mandate requires judicial application of mind to ascertain whether the facts alleged disclose cognizable offence. In the instant case the order is bereft of any reasons and reflects total non-application of mind.
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> (Emphasis supplied)

(ii) Application of Judicial Mind

34. It is no more *res integra* that power under Section 156(3) Cr.P.C. is to be exercised judiciously and direction for registration of FIR is to be given only after due application of judicial mind.

35. In this regard, this Court, at the outset, takes note of the observations of Hon'ble Apex Court in ***Priyanka Srivastava*** *(supra)* wherein it was held that power under Section 156(3) Cr.P.C. warrants application of judicial mind. The pertinent excerpt from the judgment reads as under:

> "27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the **learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind.** He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order....to be adhered to.
>
> ****
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> 29. At this stage it is seemly to state that **power under Section 156(3) warrants application of judicial mind. A court of law is involved.** It is not the police taking steps at the stage of Section 154 of the code. **A litigant at his own whim cannot invoke the authority of the Magistrate.** A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same."
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> (Emphasis supplied)

36. Similar observation was made by Hon'ble Supreme Court in case of ***Ramdev Foods Products Pvt. Ltd. v. State of Gujarat*** *(2015) 6 SCC 439,* which read as under:

> "22. Thus, we answer the first question by holding that:

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

37. In the case of ***Anil Kumar. v. M.K. Aiyappa*** *(2013) 10 SCC 705*, the Hon'ble Apex Court had considered the scope of powers under Section 156(3) Cr.P.C. and highlighted the requirement of applying judicial mind and recording reasons while directing registration of FIR. The relevant portion of the judgment reads as under:

> "11. The scope of Section 156(3) Cr. P.C. came up for consideration before this Court in several cases. This Court in Maksud Saiyed Case examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. **The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted.** We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."
>
> (Emphasis added)

38. This Court in case of ***Subhkaran Luharuka*** *(supra),* while emphasising upon the need to apply judicial mind while ordering registration of FIR under Section 156(3) Cr.P.C., had observed the following:

> "40. The aforesaid Judgment also emphasis that **there should be application of mind before a Complaint is sent to Police for investigation** and holds that it is not necessary to refer every Complaint filed under Section 200 to the police for investigation under Section 156(3) of the Code. It has been stated that if such order is passed in routine without application of mind there is every likelihood of causing harassment to the accused persons by unscrupulous Complainants.
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> 41. In another judgment delivered by this Court in the case of *Skipper Beverages Pvt. Ltd. v. State (supra)* also relied upon by the petitioner a similar view has been taken by this Court also. In that case the judgment of the Apex Court in *Suresh Chand Jain v. State of Madhya Pradesh (Supra)* relied upon by the complainant has also been referred to. The relevant paragraphs of that judgment are also reproduced for the sake of reference:
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> > 7. It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but **this power has to be exercised judiciously on proper grounds and not in a mechanical manner.** In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to held the complainant. The police assistance can be taken by a Magistrate even Under Section 202(1) of the Code after taking cognizance and proceeding with the complaint under Chapter XV of the Code as held by Apex Court in 2001 (1) Supreme Page 129 titled "Suresh Chand Jain v. State of Madhya Pradesh"

> 10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empower the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. **Therefore the Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant.** These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact.
>
> 42. Thus, there are pre-requisites to be followed by the complainant before approaching the Magistrate under Section 156(3) of the Code which is a discretionary remedy as the provision proceeds with the word 'May'. **The magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police.** It is thus not necessary that in every case where a complaint has been filed under Section 200 of the Code the Magistrate should direct the Police to investigate the crime merely because an application has also been filed under Section 156(3) if the Code even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, may be with the assistance of the court or otherwise. The issue of jurisdiction also becomes important at that stage and cannot be ignored."
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> (Emphasis supplied)

39. In ***Mohd. Salim v. State*** *2010 SCC OnLine Del 1053* also, this Court had expressed that the discretion under Section 156(3) Cr.P.C.

must not be exercised arbitrarily, but on sound principles of law. The relevant observations read as under:

> "13. Since the **discretion vested in the Magistrate under Section 156(3) of the Code of Criminal Procedure is a judicial discretion which cannot be exercised arbitrarily and on his whims and fancies, but needs to be guided by on sound principles of law governing exercise of such a discretion,** it cannot be said that the discretion exercised by him cannot be subject matter of challenge in appropriate proceedings. If the Magistrate exercises discretion arbitrarily or in contravention of the principles governing exercises of such a discretion by him, the perso against whom the discretion is exercised cannot be left remediless...
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> ***
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> 21. Thus this judgment also recognizes that the discretion exercised by a Magistrate under Section 156(3) of the Code is a judicial discretion, which cannot be exercised arbitrary. **Even while passing an order under Section 156(3) of the Code, the Magistrate necessarily needs to apply his mind to the facts and circumstances of the case in order to take a prima facie view as to whether the compliant made before him discloses commission of a cognizable offence or not** and further to decide whether the case before him needs to be investigated by the police or it was a simple case which the complainant himself could prove by leading evidence before the Magistrate without aid and State machinery and, therefore, the order passed by him is a judicial order. Once it is held that the discretion exercised by the Magistrate is a judicial discretion and the order passed by him is a judicial order, it is difficult to accept that the order passed by him is not capable of being challenged in any judicial proceedings on any ground whatsoever..."
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> (Emphasis supplied)

40. To summarise, a conspectus of the above-mentioned judicial precedents reveal the following:

(i) Power under Section 156(3) Cr.P.C. necessitates application of judicial mind.

(ii) Such power is to be exercised in a judicious manner, and cannot be exercised mechanically or arbitrarily.

(iii) Magistrates cannot direct registration of FIR on mere asking of complainant.

(iii) *Necessity to pass Speaking Order*

41. Given that the exercise of power under Section 156 Cr.P.C. falls within the realm of judicial function rather than administrative, it necessitates the application of judicial mind. Consequently, it is incumbent upon the Magistrate to pass a reasoned order directing registration of an FIR.

42. This Court in ***Gurdeep Singh Sudan v. State*** *2013 SCC OnLine Del 2553* had observed that learned Magistrates should pass speaking and reasoned orders while deciding applications under Section 156(3) Cr.P.C. The relevant observations in this regard read as under:

> "24. Having dwelled upon the said facet, without expressing any view on the merits of the case it would be appropriate that the learned Magistrate shall pass a speaking and a well-reasoned order..."

43. In ***Om Prakash v. State*** *2012 SCC OnLine Del 175* also, this Court while relying upon the earlier decision of this Court in case of ***Subhkaran Luharuka*** *(supra)* had highlighted the importance of providing reasons, in the following manner:

> "17. Though the guidelines in the case of Subhakarana Luharkha (Supra) came to be passed by this Court after the impugned order of the learned MM, but it is seen that the impugned order seems to have been passed by the learned MM in routine and casual

manner. The learned MM ought to have given reasoned order while directing registration of FIR under section 156(3) Cr. P.C. Not only that, no reasons have been given, even it has also not been stated against whom and under what provision of law the FIR was to be registered."

EXAMINING THE PRESENT CASE ON THE TOUCHSTONE OF ABOVE INGREDIENTS

44. Once a complaint/application under Section 156(3) Cr.P.C is filed, the Magistrate can exercise the option of applying his own judicial mind to the entire material on record and may direct registration of FIR. However, at times, the Magistrate also calls for a report from the police as to why no action had been taken on an earlier complaint filed by the complainant with the police, and thereafter, once a report is filed by the police, the Magistrate applies his mind to the material before him i.e. the complaint as well as the Action Taken Report which constitutes a preliminary inquiry conducted by the police. After this, the Magistrate may make up his mind to either order registration of FIR or otherwise. In case the police closes the complaint on ground that no cognizable offence was made out, the Magistrate may again apply his mind disagreeing with the Action Taken Report and issue directions for registration of the FIR or may take into consideration the Action Taken Report and material on record vide the complaint filed before it and pass appropriate directions.

I. Preliminary Inquiry in Present Case: Examining Action Taken Report

45. Keeping in perspective the aforesaid observations, this Court has carefully perused and examined the records of the case including the order impugned before this Court.

46. The Action Taken Report filed by the police before the learned Magistrate contained a detailed account of preliminary inquiry conducted by the police including, *inter alia*, eight statements of local residents, which were on similar lines. One such statement is reproduced below for reference:

> बयान किया मैं उपरोक्त अपने परिवार के साथ रहता हूं और property Dealer का काम करता हूं, अभी पिछले दिनों में कुछ अवांछनीय तत्वों ने लाल कुआं मंदिर में तोड़-फोड़ कर दी थी जो कुछ तुच्छ लोगों की गंदी हरकत थी जिस पर पुलिस ने तुरंत उचित कार्रवाई की। जिसमें यहां के हम सभी दोनों कम्युनिटी के लोगों ने भी पुलिस का साथ दिया था, और यहाँ की तमाम जनता ने, उन उपद्रवीयों को पुलिस को पकड़वाने में भी सहायता की थी। उसके बाद दिनांक 09.07.2019 को हिन्दु धर्म के लोगों ने उपरोक्त मंदिर मे पुन: प्राण प्रतिष्ठा करके मूर्ति स्थापना कराई थी। जो उस दिन हिन्दु धर्म के कई लोगों ने अलग अलग मंच से अपने अपने विचार प्रकट किए थे। उस दिन हमारे समुदाय के लोगों ने उपरोक्त प्राण प्रतिष्ठा समारोह मे आए तमाम लोगों का फूल बरसाकर स्वागत किया था। इस दौरान हिन्दु धर्म के कई सम्मानित लोगों ने मंच से भाषण भी दिये थे, जो सभी अपने - अपने विचार रख रहे थे। जिसमे हमने विश्व हिंदू परिषद के Sh. Alok Kumar व काशी के एक Swami ji के भाषण भी सुने थे। जिसमे स्वामी जी ने मंदिर तोड़ने वाले लोगों के खिलाफ कुछ शब्द कहे थे, जो ये भी कह रहे थे कि ऐसा काम मत करो, हमे भी चैन से रहने दो और खुद भी चैन से रहें। स्वामी जी की तमाम बातें मंदिर तोड़ने वाले लोगों के खिलाफ थी जो कि लाजमी है हर धर्म के लोग अपने भगवान के प्रति असीम विश्वास रखते हैं। मैंने वह मेरे परिवार के लोगों ने स्वामी जी के किसी भी बात का बुरा नहीं माना और ना ही हमारे मन में किसी व्यक्ति या धर्म के प्रति विरोध पैदा हुआ है। इसके अलावा उस दिन किसी के भी भाषणों से भी मुझे दंगा फसाद फैलाने के लिए जाने वाली कोई बात नहीं लगी और उस घटना के बाद से ना तो किसी वर्ग विशेष में यहां एक दूसरे के लिए कोई रोष है और ना ही कोई नफरत, हम सभी लोग यहां पर आपस में मिलजुल कर प्यार से रह रहे हैं हमें किसी ने नहीं उकसाया है और ना ही हम आगे कोई दंगा फसाद यहां पर चाहते हैं। उसे बताया जाए हमारे इलाके में शांति बनी हुई है कृपया हमें शांति से जीने दे हम यहां पर उपरोक्त घटना के संबंध में अब किसी भी तरह की कोई पुलिस कार्रवाई नहीं चाहते, और ना ही अब कोई शिकायत है। इसके अलावा उस दिन पुलिस प्रशासन भी काफी अधिक संख्या में तैनात था। जो कि पुलिस यहाँ समय समय पर हर धर्म के लोगों को उनके धार्मिक जलूस या कार्यक्रम मे सुरक्षा प्रदान करती है। यहाँ क्षेत्र मे कोई तनाव नहीं है। दिनांक 09.07.2019 को लाल कुआं मे दिये गए किसी के भी भाषण से मुझे व मेरे परिवार के लोगों को कोई आपत्ति नहीं हुई।

47. There is also a statement of the President of the Resident Welfare Association of the area, signed by 31 members, who have rather prayed to the local police that since neither disharmony has been caused nor there is atmosphere of animosity, unnecessary malicious and frivolous complaints be also not entertained as they intend to disturb the peace of area. The said statement reads as under:

श्रीमान जी निवेदन इस प्रकार से है कि मैं RWA Gali Meer Jumle Wali Hauz Qazi Delhi 06 संस्था का president हूं। आपने एक शिकायत का जिक्र किया था जिसमें आपने बताया था कि "पिछले दिनों हमारे इलाके लाल कुआं में मंदिर तोड़ने की जो घटना हुई थी, उसके बाद दिनांक 9-7 -2019 को उपरोक्त तोड़े गए मंदिर में पुनः प्राण प्रतिष्ठा कराकर मूर्तियों की स्थापना की गई थी उस दिन विश्व हिंदू परिषद के श्री आलोक कुमार जी व काशी के स्वामी जी ने जन समारोह को संभोधित किया था, जिनहोने अपने भाषण में धार्मिक भावना के आधार पर लोगों की धार्मिक भावनाओं को भड़काने व दंगा फैलाने के लिए उकसाने की कोशिश की थी।" जो इस संबंध मे अर्ज है कि उस दिन हमने उस धार्मिक सभा मे शामिल हुए लोगों का फूल बरसाकर व कोल्ड ड्रिंक्स पिलाकर सत्कार किया था, साथ ही मंदिर को नुकसान पहुंचाने वाले लोगों के लिए पुलिस की सहायता भी की थी। हम सभी ने उस दिन सारे कार्यकर्म को देखा था, और काशी के स्वामी जी के भाषण भी सुने थे। जिनहोने मंदिर को तोड़ने वाले लोगो के प्रति थोड़ी नाराजगी जाहीर की थी जो कि लाज़मी है। अगर कोई हमारे धार्मिक स्थल को कोई नुकसान पहुंचाएगा तो निश्चित रूप से हमारे समुदाय के लोग भी नाराज होंगे। उनके भाषण से हमारी धार्मिक भावनाओं को कोई ठेस नहीं पहुंची है, और न ही हिन्दू समाज का कोई भी व्यक्ति आक्रोशित हुआ था। जो कह रहे थे कि मुस्लिम बहुल इलाकों मे हिंदुओं के मंदिर है तो हिन्दु बहुल इलाकों मे मस्जिदें भी है। इसलिए ऐसा काम मत करो, हमे भी चैन से रहने दो और खुद भी चैन से रहो। जिसमे वे कुछ पुरानी घटनाओं की बात कर रहे थे और कह रहे थे कि वो कोई चेतावनी या धमकी नहीं दे रहे हैं। जो अपने भाषण मे पुलिस को दूसरा मुकदमा दर्ज करने की भी बात कर रहे थे। जबकि पुलिस ने पहले ही उचित कार्यवाही की हुई थी। न तो स्वामी जी के भाषण से यहाँ कोई दंगा फसाद हुआ। और न ही किसी ने भी विरोध या नारेबाजी की, और न ही यहाँ कीसी भी तरह से कोई शांति भंग हुई है, न ही यहाँ पर रहने वाले लोगों मे किसी व्यक्ति विशेष या धर्म के प्रति कोई नफरत पैदा हुई है। यहाँ सब शांति है। सभी समुदायों मे आपसी प्यार व भाईचारा बना हुआ है। हमे किसी के भाषण से कोई भी परेशानी नहीं हुई है। फिर भी अगर किसी ने कोई शिकायत दी है तो ये उसके अपने विचार हो सकते हैं। उसे बताया जाए कि हमारी शांति को भंग न करें। हमे अपना जीवन खुशी से वियतीत करने दें। ऐसी किसी शिकायत पर कोई कार्यवाही न की जाये जिससे हमारे इलाके फिर से तनाव पैदा हो। धन्यवाद

48. Another statement of the President of Aman Committee of the area also indicates the same as aforesaid.

49. To summarise, a perusal of contents of the Action Taken Report reveals as under:

(i)No cognizable offence was disclosed from the contents of complaint;

(ii) No religious acrimony had been caused pursuant to speech being delivered by proposed accused no. 2 i.e. Swami ji;

(iii) There were several statements of the local residents to the effect that no incident mentioned in the complaint had taken place;

(iv) That the President of Residents Welfare Association and President of Aman Committee i.e. Peace Maintaining Committee of the area, along with their respective members and office-bearers, had written to the SHO themselves that there was complete peace and harmony in the area and no malicious complaints of any nature be entertained as the allegations mentioned in the complaint lodged by the complainant had not taken place;

(v) That the religious ceremony was carried out peacefully by Hindu Community for 'Murthi Pratishtha' as the idols of Hindu Gods and Goddesses had been vandalised and non-Hindus had not only participated in it for the Pran Pratishtha ceremony, but had also showered flower petals, offered cold drinks etc. to each other

when the religious ceremony was carried out by Hindu community;

(vi) That there was no specific role assigned to the present petitioner in the complaint;

(vii) Since no cognizable offence was found to have been committed, the case had been closed by the police.

II. Whether commission of cognizable offences are disclosed against the petitioner?

50. In the present case, the learned Magistrate had observed in the impugned order that the allegations levelled by respondent no. 1 disclosed commission of a cognizable offence, and thus, registration of FIR was mandatory. However, the impugned order is completely silent as to commission of which offence under IPC or any other law was disclosed from the averments made in the complaint and against whom. Further, in paragraph 6 of the impugned order, it was directed that the police should first investigate and find out whether actually any offence has been committed or not.

51. To consider and appreciate whether the petitioner is justified in raising the contention that the allegations levelled by respondent no. 1 do not contain the ingredients to constitute the alleged offences or whether respondent no. 1 had made out a *prima facie* case for even investigation, this Court has carefully perused the complaint and application filed by respondent no. 1 before the learned Magistrate.

52. The allegation against the present petitioner levelled by respondent no. 1 in his complaint/application read as under:

> "2. The Accused No. 1 is the international working president of the Vishwa Hindu Parishad that had organized a rally on 9th of July, at Old Delhi, Lal Kuan Area..."

53. On the other hand, respondent no. 1 had alleged that proposed accused no. 2 i.e. Swami ji had allegedly delivered a speech which was intended to intimidate members of Muslim community and cause disharmony among members of different communities.

54. In light of aforesaid allegations levelled by respondent no. 1 against the petitioner and co-accused for commission of offences under Sections 153, 153A, 153B, and 503 of IPC, it is pertinent to extract these provisions for reference:

> **"153. Wantonly giving provocation with intent to cause riot—if rioting be committed—if not committed.—**
>
> Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
>
> **153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—**
>
> (1) Whoever—
>
> (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or

feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both. Offence committed in place of worship, etc.—

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

153B. Imputations, assertions prejudicial to national-integration.—

(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

503. Criminal intimidation.—

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section. Illustration A. for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

506. Punishment for criminal intimidation.—

Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

55. Upon careful examination of the material available on record, especially in light of decision in ***Usha Chakraborty*** *(supra)*, this Court takes note of the following crucial facts:

(i) To be covered within ambit of Section 153 of IPC, an act should have been done malignantly to provoke any person to cause any riots and the act must be illegal. In the present case, neither the complaint nor the Action Taken Report point towards the commission of any such offence.

(ii) The Action Taken Report filed on record, which is based on statements of many local witnesses recorded by the police, was placed before the learned Magistrate and the report clearly revealed that the petitioner herein had committed no offence, and there was no evidence on record whatsoever to reflect that the petitioner himself had spoken or written anything with an intent to cause disharmony or generate feelings of enmity or any act prejudicial to maintaining harmony between different religious groups which was likely to disturb the public tranquillity, to bring the case within the ambit of Section 153A(1)(a)/(b) of IPC.

(iii) Further, even if for the sake of arguments, one assumes that the petitioner had organised a public meeting, although there is no evidence or even an allegation qua the same, the said act could not be held to be a criminal activity, since as per Section 153A(1)(c) of IPC, it is only a meeting or an exercise or movement or drill or any similar activity which is organised, intending that the participants in such activity will use or be trained to use criminal force or violence, is punishable under Section 153A(1)(c). There was nothing on record to suggest or assign

any act of omission or commission to establish any criminal activity on part of the petitioner since the same was not disclosed even on the basis of averments made in the complaint or Action Taken Report filed by the police.

(iv) Similarly, there was also no material or even an allegation to suggest that petitioner had made any imputation or assertions that was prejudicial to national integration, or that he had imputed or asserted or advised or propagated appeal which could cause disharmony or feelings of enmity, hatred or ill-will between members of public, in terms of Section 153B of IPC.

(v) As per the preliminary inquiry conducted by the police, the petitioner by no action of his, had either criminally intimidated anyone or had made any attempt to incite any class or community of persons to commit any offence against any other class or community.

56. Thus, as far as the present petitioner is concerned, there are absolutely no allegations in the complaint that the petitioner herein had hurt the feelings or had incited or had committed any action by his words, spoken or otherwise, or had incited the religious sentiments of the communities or he had put anyone in fear of injury or intimidated anyone. It was, therefore, clear that respondent no. 1 had not made any specific allegations against the petitioner in respect of the aforesaid offences, except to state that he was International Working President of Vishwa Hindu Parishad and the said organisation had organised the public meeting on 09.07.2019, which are entirely insufficient to attract the ingredients of the alleged offences.

57. The offences in question, alleged to have been committed by the proposed accused persons, are essentially *mens rea* offences i.e. the same require intention or knowledge on part of accused and therefore, criminal liability cannot be attributed to one person for the words spoken by another.

58. Thus, having considered the records of the case from the lens of dictum in case of ***Usha Chakraborty*** *(supra)* and other judicial precedents, this Court is of the view that the averments made in the complaint and application filed under Section 156(3) Cr.P.C. did not disclose commission of any offence by the present petitioner.

(i) *Function of Pleadings*

59. There is no gainsaying that the function of the pleadings or a written complaint is to provide the Court with an outline of the material allegations, the material *prima facie* available with the complainant, and the relief sought.

60. Though, in many cases, the evidence as to how a cognizable offence is made out may be ascertained at the outset, in case of no specific allegations or material on record, a Court cannot order registration of FIR in a mechanical manner without actually recording its satisfaction as to whether the essential ingredients of an offence are prima facie made out or not against the accused, as also held by Hon'ble Apex Court in ***Usha Chakraborty*** *(supra)*.

III. Whether impugned order reflects application of judicial mind?

61. In the given circumstances and factual background of the case, coupled with the contents of the impugned order, it becomes essential for this Court to deliberate upon the legal position concerning application of judicial mind while exercising power under Section 156(3) of Cr.P.C.

62. In the present case, the learned Magistrate had himself posed the questions *vide* order dated 16.10.2019 to the police to be answered through an Action Taken Report, and each issue and question was addressed by the police by way of filing of Action Taken Report as well as reply by Additional DCP concerned. Since the impugned order has been passed without recording reasons, it can be presumed that learned Magistrate had applied its mind to the contents of the complaint and only thereafter, had deemed it fit to call for Action Taken Report. Therefore, it was expected that the material so placed before him by way of such report should have been perused by him.

63. In such circumstances, learned Magistrate should have taken note of the fact that local residents as well as RWA and Aman Committee also, by way of their representations and the complaints to the police, were requesting the police to not pay any attention to the complaints of respondent no. 1 who was rather trying to disturb the peaceful relations between members of the two communities who were living peacefully in the same area. Such statements unambiguously pointed towards no incident of animosity having taken place and rather it represented a situation where both the communities were living with love and

affection despite one unpleasant incident that had taken place on 01.07.2019 of vandalising the idols of Hindu Gods and Goddesses regarding which an FIR had been lodged and culprits had been arrested. It was rather heart-warming to note that both the communities had participated in the 'Pran Pratishtha' ceremony of idols of Hindu Gods and Goddesses in the area and the members of non-Hindu community had welcomed participants of the meeting by showering flowers on them and by participating in their religious activities and meetings.

64. The impugned order is, however, completely silent about the reply as well as the Action Taken Report filed by the police through which the material collected on the basis of the earlier complaints of the complainant had been placed before the learned Magistrate.

65. There is nothing on record to show as to why the learned Magistrate disagreed with the Action Taken Report or status report filed by the police since respondent no. 1 had first approached the police as per law with a similar complaint. The Action Taken Report was overlooked and brushed aside in its entirety which mentioned that statements of many local residents of both the communities were recorded and not a single witness ever gave a statement to the police regarding any untoward incident having taken place post the speech of accused no. 2 i.e. Swami ji or regarding any role of the present petitioner in commission of any offence. Had the learned Magistrate discussed the Action Taken Report, even for the purpose of disagreeing with it, it would have given an insight as to what had weighed in his mind to have directed the registration of FIR by relying completely upon the complaint of respondent no. 1 and disregarding the Action

Taken Report and initial inquiry conducted by the police. The impugned order was passed in absence of any specific discussion. The order reveals that the learned Magistrate himself was not clear about commission of any particular cognizable offence under IPC and regarding the role attributable to the petitioner.

66. It can also be noted that the complaint and application in question was filed before the learned Magistrate on 04.10.2022 and was taken up on 14.10.2022, which is much after the alleged incident had taken place i.e. on 09.07.2019. It is noteworthy that the complainant had not brought on record any fresh material. Further, there was no law and order problem or any issue of religious animosity or disharmony in the concerned area, which is apparent from the material on record as discussed above.

67. However, this Court should not be taken to be holding a view that the Action Taken Report/Status Report filed by police cannot be disregarded or a different view cannot be taken. But the present case is peculiar in its facts and circumstances where an Action Taken Report was specifically called for by the learned Magistrate and if he had deemed it fit to disagree with the same, the order should have reflected so, as well as the reasons for registration of FIR on the basis of facts or material placed before him by the complainant.

68. This Court in ***Harpal Singh Arora v. State*** *2008 SCC OnLine Del 530* had noted that proper course of action includes the examination of Action Taken Report, which is reproduced as hereunder:

> **"16. Considering the fact that the learned MM called for the report of the CAW Cell, which is fairly detailed, the proper**

> **course of action before ordering an investigation under Section 156 (3) would have been to examine that report before deciding to issue a direction for investigation.** When the police in the CAW Cell has come to conclusion that no cognizable offence is made out, the Magistrate cannot brush aside that conclusion lightly. Although that the said conclusion of the CAW Cell is not binding on the Magistrate at that stage, since his order is a judicial one he must give reasons, however brief, why he is inclined to order investigation notwithstanding the said report. Question (b) is answered accordingly."
>
> (Emphasis supplied)

69. A reference can also be made to the decision of this Court in case of ***Gurdeep Singh Sudan*** *(supra)* wherein the order passed under Section 156(3) Cr.P.C. was challenged on the ground that no reference had been made to the reasoning given by the police in the closure report and other documents investigated and referred to in the report. The relevant observations are as under:

> **"24. ...If the Magistrate finds himself in disagreement with the view taken by the police in the closure report then also his order must reflect a brief reasoning for taking such a distinctive view. As already stated above it is within the judicial discretion of the Magistrate, either to accept the closure report or reject the same as the report of the police has no binding effect on the Magistrate, but the order passed by the Magistrate must show that there is a proper application of judicial mind by the Magistrate."**
>
> (Emphasis supplied)

70. Thus, the learned Magistrate could have disagreed with the Action Taken Report and could have given his own brief reasons as to how and what cognizable offences were made out against accused persons including petitioner for directing registration of FIR.

71. However, in the present case, **even if the Action Taken Report is excluded from consideration**, the complaint on the face of it did not contain even a single allegation against the present petitioner to have ordered registration of FIR.

72. Moreover, in the present case, while directing the registration of FIR, the learned Magistrate had observed that 'a cognizable offence' was disclosed from the facts so alleged and the police was duty bound to register an FIR as per Section 154 Cr.P.C. in view of the decision of Hon'ble Apex Court in case of ***Lalita Kumari v. Govt of Uttar Pradesh*** *(2014) 2 SCC 1*. However, as also observed by Hon'ble Apex Court in case of ***Priyanka Srivastava*** *(supra)*, Section 156(3) warrants application of judicial mind since it is not a police officer who is taking steps under Section 154 Cr.P.C.

73. The purpose behind the enactment of Section 156(3) of Cr.P.C. was to offer a recourse to citizens by providing a judicial remedy in situations where the police fails to take appropriate action upon a complaint disclosing a cognizable offence. This provision enables an ordinary individual to approach a criminal court, which, after carefully examining the contents and material placed before it by the complainant, can request a status report or an action taken report from the police. This mechanism serves to remind and question the police about their duty and inquire as to why no action has been taken on the complaint in question. Furthermore, it is evident from the scheme of Cr.P.C. that a police complaint should be first lodged by a complainant as per Section 154 before seeking recourse under Section 156(3) Cr.P.C. Therefore, directing registration of an FIR under Section 156(3) Cr.P.C.

is a serious judicial function. In case the Court is informed that the police has failed to do its duty and an application is moved under Section 156(3) Cr.P.C. seeking direction to register an FIR, the concerned Court is duty bound to apply its judicial mind to the facts of the case before it prior to directing registration of the FIR.

(i) Importance of Reasoned Order

74. While having emphasised upon the need to apply judicial mind while deciding an application under Section 156(3) Cr.P.C., it is also imperative to highlight the necessity of passing a reasoned order so as to exhibit the application of judicial mind in unambiguous terms.

75. The importance of passing a reasoned order cannot be undermined when the order in question is challengeable in the higher Court and can be called into question by a petition seeking judicial review by way of a revision or appeal. When faced with an order which is passed without reasons, the higher Courts cannot decipher whether or not the concerned Judge has reached the decision after application of judicial mind or not. The application of judicial mind can be adjudged only by appreciating the reasons given to support the order in question. Whether the order in question lacks application of judicial mind, non-appreciation of relevant provisions of law or incorrect application of law and judicial precedents, can also be judged only through the reasons given in the order. The higher Courts also will not know as to whether relevant or irrelevant considerations became the basis of passing the order in absence of sufficient reasons. Similarly, whether the discretion of the Court was exercised judicially or not, or was based on relevant or

irrelevant considerations, will be revealed by the reasons discussed in the impugned order. Since the decision and discretion exercised by a criminal Court affects significantly an individual against whom such direction is being issued, procedural and judicial fairness will require reasons to be given for the same.

76. From the perspective of appellate review, factually supported and reasoned order facilitates a review of the order. It also facilitates the correcting role of the appellate Courts by reaching a correct decision in case the reasons are found to be baseless or based on incorrect facts and law. In the judicial hierarchy of our country, the task of the Appellate or a Higher Court of reviewing erroneous orders with the aim of ensuring that justice is done to a litigant can be performed better in case a reasoned order is passed by the Courts below. Judicial accountability and the requirement of giving reasons so that the same can be scrutinised by the appellate Courts make it essential that the orders passed, which involves serious repercussions for a person especially since he is not before the Court, will also let the person so affected know as to what was the basis of issuance of a particular direction or order.

77. The duty to give reasoned decisions is also an obligation which is in consonance with idea of institutional responsibility of judiciary to the public at large, since they are entrusted with judicial power of making decisions which affect the lives of the citizen of this country who have a right to know, through the reasoning given by the Judge, as to how and why an order has been passed against them. Reasons are expressions of a Court's judicial mind which is essential for judicial function.

Administrative decision making functions cannot be equated with judicial decision making function. It is the judicial decisions which distinguishes between a decision based on application of judicious mind as distinguishable from arbitrary decisions. Whether the reasons for decisions are adequate or inadequate, judicious or arbitrary, thus can be decided by an appellate Court on the basis of reasons which become the basis of reaching a conclusion. The reasons, thus, disclose the journey of a case from filing of an application under Section 156(3) Cr.P.C. to passing of a direction, a judgment or order.

78. The reasons given in an order or judgment articulate the factual and legal basis for the decisions. The growing case load, pressures or other constraints before the Courts should not be the grounds to pass orders without recording satisfaction for the same. The principles of fairness and procedural and natural justice require reasons to be given for passing a judicial order of the nature as in the present case. When justifying an order, the concerned Judge conveys to the litigant and the appellate Court that the view taken by him is consistent with law and precedents.

79. The cases where exercise of judicial discretion is involved, the requirement of giving reasons therefore assumes more significant importance. No rules or guidelines can be laid down as to which issue involved in a petition, complaint or application would require reasons to which extent. Whether the reasons be given in detail, in a given set of facts and circumstances, can be decided by the learned Trial Judge by application of judicial mind. However, the one rule to be scrupulously followed while directing registration of FIR is that such an order cannot

be a cryptic and non-reasoned order, which at times may run into two pages, but still neither discusses facts in brief nor the details qua cognizable offence disclosed from the facts alleged which had persuaded the Court to order registration of FIR.

80. However, it is not the number of pages in which the order runs that decides application of mind, but the contents of the same. If the order directing registration of the FIR does not deal with the most essential pre-conditions for doing so, it cannot be a valid or legal order.

81. In this background, this Court has carefully perused the impugned order dated 18.02.2020 passed by the learned Magistrate.

82. Suffice it to say, the entire impugned order is completely silent about the facts of the case or reasons to reveal the satisfaction of the learned Magistrate that a cognizable offence of such serious nature, as alleged, was disclosed against the present petitioner from the complaint filed by respondent no. 1. To have ordered registration of FIR under appropriate sections, considering the fact that the respondent no. 1 had alleged commission of offences *inter alia* relating to provocation of riots, promoting enmity between different groups on ground of religion etc., and making imputations or assertions prejudicial to national integration, required recording satisfaction of the learned Magistrate and reasons thereof that such offences had been even *prima facie* committed by the proposed accused persons including the petitioner herein.

83. To have simply written one line order "*that the complaint discloses commission of cognizable offence*" without giving reasons as to which facts led the learned Magistrate to make up his mind for reaching the said decision was entirely insufficient. A well-reasoned

order will assure the person, adversely affected by the said decision, that it was not arbitrarily made and the relevant provisions of law had not been ignored. A higher Court will also be able to exercise its judicial review powers effectively in case the reasons for decision are provided. In the peculiar context of present case, it is clear that the learned Magistrate overlooked an important principle that reasons needed to be given to set out as to why an order for registration of the FIR was passed.

84. The reasons in an order give reassurance in an open public justice system that the discretion vested in the Court has been judiciously exercised and is supported by judicial precedents and guidelines laid down apropos the issue in question. **Reasons cannot be cryptic or based on extraneous considerations** or on irrelevant grounds or against the doctrine of natural justice. **Neither can they be in the form of performa orders passed casually in similar kinds of cases** or applications without having regard to the individualism and peculiarity of a case.

85. Setting of criminal law into motion by directing registration of FIR against a person should not be mechanically ordered. One line orders stating that in a complaint cognizable offence has been disclosed against one named and another unnamed person, without application of mind to the complaint in hand which disclosed no offence committed by the present applicant, cannot be sustained in the eyes of law. Thus, non-existence of reasons in the order in question was against the judicial precedents and guidelines laid down for deciding applications under Section 156(3) Cr.P.C.

LAW ON VICARIOUS LIABILITY IN CRIMINAL CASES

86. Learned Senior Counsel for the petitioner had argued that a person cannot be held vicariously liable for the acts of others under criminal law, unless the same is specifically provided for by any law in force. It was contended that even if for the sake of arguments, it was accepted that any cognizable offence was made out from the allegations levelled by respondent no. 1, the same would not be against the present petitioner.

87. To appreciate this argument, this Court has examined the contents of the complaint and application filed under Section 156(3) Cr.P.C. as well as the reply filed on behalf of respondent no. 1 to the present petition. A perusal of the same reveals as under:

(i) In the first complaint filed by respondent no. 1 with the police, only proposed accused no. 2 i.e. Swami ji was mentioned as an accused and action was sought to be taken against him. The name of the petitioner was not mentioned in the entire complaint. Only at a later stage when the complaint and application under Section 156(3) Cr.P.C. was filed before the learned Magistrate, the name of the petitioner finds mention.

(ii) Even in the complaint and application filed under Section 156(3) Cr.P.C. and reply to present petition, respondent no. 1 has not alleged that the petitioner had organised the public meeting or was responsible for same where the alleged hate speech was delivered. Rather, he has merely stated that Vishwa Hindu Parishad had organised the public

meeting on 09.07.2019 in New Delhi, and the petitioner happened to be the International Working President of the said organisation. It is thus, not mentioned anywhere by respondent no. 1 that petitioner was responsible for organising the meeting in question or inviting the unknown Swami ji to Delhi.

(iii) Furthermore, it is nowhere alleged by respondent no. 1 that petitioner was either present at the public meeting on 09.07.2019 or that he had delivered speech with such remarks that would amount to commission of offences punishable under Sections 153, 153A, 153B and 503 of IPC.

88. On the issue of vicarious liability under criminal law, the Hon'ble Apex Court in ***Sham Sunder & Ors. v. State of Haryana*** *(1989) 4 SCC 630* has held as under:

> "9. But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."

89. Similarly, in ***S.K. Alagh v. State of U.P. & Ors.*** *(2008) 5 SCC 662,* the Hon'ble Supreme Court had expressed as under:

> "16. Indian Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence."

90. Vicarious liability means making one person liable for action or inaction of another on the basis of their relationship with each other. Under the Indian Penal Code, a person in some cases can be made

vicariously liable for the action of another such as in cases relating to Sections 149, 154, 155, 156, etc. In criminal law in India, there is no concept of strict vicarious liability except where it is so provided under law or by judicial precedents. Thus, accountability for a criminal action is based upon a factual situation or incident *prima facie* established at the initial stage of criminal proceedings and proving it beyond doubt when it concludes.

91. In view of the settled position of law, the learned Magistrate while directing registration of FIR against the present petitioner should have carefully examined the contents of the complaint and application filed under Section 156(3) Cr.P.C. as well as the Action Taken Report to satisfy himself as to whether any cognizable offence had been committed by the present petitioner, as revealed from the material on record. The record reveals that the learned Magistrate had ordered registration of FIR, though he himself was not convinced as to under which sections the FIR was to be registered and which cognizable offences were revealed to have been committed by the petitioner and what role was played by him. The learned Magistrate only mentions the following while he orders registration of FIR:

> "2. Record perused. Arguments heard. The facts alleged revealed commission of a cognizable offence, hence police is duty bound to register an FIR"

92. This Court is also constrained to note that there is *no concept of vicarious criminal liability* for the offences for which the complaint had been filed in the present case. The impugned order itself is completely silent about the role of the petitioner and material available against him.

It seems that the learned Magistrate had found the present petitioner to be vicariously liable for a speech delivered by another person present in the meeting, though no role had been assigned to him to attract criminal liability or accountability.

93. In the present case, the complaint filed by respondent no. 1 or the subsequent Action Taken Report filed by the police *did not indicate any relationship between the petitioner and the person who delivered the speech.* Therefore, even by entirely accepting the allegations of respondent no. 1 that the speech in question would attract the relevant sections of law, the material on record does not disclose that such illegal act had been committed by the present petitioner in furtherance of any common intention.

94. Further, even if it is presumed that the petitioner was present at the spot of meeting, it would not attract the criminality of offences alleged without there being any indication that the meeting had been organised by him either in his individual capacity or being working as International Working President of Vishwa Hindu Parishad. Also, even if it is presumed that the meeting in question had been organised by the petitioner, *which is not even alleged by respondent no. 1 and for which there is no material or evidence on record*, it could not have been held that it amounted to commission of an illegal act simply because one of the participants delivered an alleged hate speech during a public meeting.

95. Mere presence in itself is not enough to indicate that petitioner was taking part, concurring or encouraging any other person to commit any offence in the factual circumstances of present case. While

organising a meeting will be a lawful act, if something unlawful takes place as a result of some action entirely unknown to the organiser by some person not related to him, whom he had no control over and for whom he had no responsibility, but both were just present at a spot for the purpose of religious ceremony, it will not attract the offences in question, as in the present case, especially as no action/role has been attributed to him in the complaint, reply filed by the police or Action Taken Report.

96. It also had to be considered that **there was no implied command of the petitioner herein over action of any other person's speech in a public function**. The impugned conduct of one person in a public meeting cannot be tied to another person present therein holding him vicariously liable. It will be on the same corollary as if in a television or a public debate, the anchor is held liable for the comments or views expressed by another.

97. In case FIRs are registered against a person organising a meeting, for the misconduct of any participant of the meeting, it will severely impact the basic principle of criminal law that a person is accountable for his own criminal actions and others are not vicariously liable for the same unless specifically provided for under law.

98. Thus, in this Court's opinion, the learned Magistrate did not consider that the organisational set up of **Vishwa Hindu Parishad has membership of several crores and has branches throughout the world.** Respondent no. 1 had merely stated in the complaint that the petitioner was International Working President of Vishwa Hindu Parishad, however, there is no allegation that the petitioner was present

at the spot at the time of alleged speech delivered by unknown Swami ji of Kashi. It is also to be noted that the learned Magistrate failed to appreciate that the allegations, if any, of organising the public meeting were attributed to the Vishwa Hindu Parishad, and it was not alleged that the petitioner was responsible in any way for organising the said meeting. The record also reveals that on 09.07.2019, the petitioner was busy with other social activities and had visited a place as chief guest in the morning and had then appeared and argued many cases in the High Court of Delhi wherein his attendance had been marked.

99. Needless to say, one cannot make a person face criminal trial for the criminal acts he has not committed. The offences in question under which the complainant wanted the FIR to be registered have been enacted to ensure rule of law and enactment of such laws has a purpose behind it. The purpose behind these sections is maintenance of public harmony. Undoubtedly, any hate speech by any person, irrespective of his religion or belief, which may lead to social disorder has to be brought within the ambit of provisions of law. However, a person against whom there is no material or evidence disclosed in the complaint or in the Action Taken Report cannot be made to face criminal proceedings. It was also to be noted that it was a sensitive time for the area concerned where a Hindu temple had been vandalised, but due to the efforts of both communities, harmony had prevailed and no incident of vandalism, riots or any kind of incident of religious animosity had taken place after the meeting in question.

100. **In each case or complaint filed before a judge, an order passed therein is a quest and pursuit to find truth.** Each case,

therefore, calls for a distinct consideration of specific facts of the case. **Undoubtedly, inflammatory speeches will attract criminal provisions of law and such sensitive matters need to be dealt with carefully so that an order of the Court does not end up in creating divide rather than unite the people**. In the present case, however, there is neither any allegation nor any material on record to indicate that the petitioner had delivered any hate speech or had asked accused no. 2 i.e. Swami ji to deliver the speech in question, and merely because the petitioner was alleged to be the International Working President of Vishwa Hindu Parishad at that point of time, it would not be sufficient to attract the offences under Sections 153, 153A, 153B and 503 IPC.

UNLIMITED MAGISTERIAL POWER DOES NOT MEAN UNFETTERED POWER

101. Giving valid reasons which disclose application of mind and use of discretion in a judicious manner is a soul of an order which needs to be maintained by a Court exercising judicial discretion and wide power. It should be borne in mind that possessing unlimited power does not equate to having unfettered power.

102. The Magisterial courts bear the responsibility of a significantly vital and essential role, as they wield extensive powers under the provisions of Cr.P.C. It is the Magisterial courts which set the criminal law in motion, whether on filing of a charge-sheet or when an application under Section 156(3) or 200 Cr.P.C. is filed. Therefore, this enormous power also comes with the responsibility of exercising

enormous caution to ensure that such power is not used in a cavalier fashion and criminal law is not set into motion against a person where it should not be done.

103. In other words, this enormous judicial power vested in a Magistrate has to be balanced with enormous caution and responsibility. An order passed for registration of an FIR is a serious order which puts the criminal law, against a person who has not been heard as yet, into motion. Thus, while doing so, the importance of a reasoned order as mentioned above cannot be overlooked.

104. **In a nutshell, while Magistrates possess significant authority and jurisdiction in their respective domains, it is important to recognize that this authority is not absolute and unconstrained.** The powers which the Magistrates have been entrusted with are subject to checks and balances to prevent abuse or misuse. Such powers ought to be exercised within the framework of established laws, procedures, and constitutional principles. The authority wielded by Magistrates must be balanced with accountability and adherence to legal norms, which is important in maintaining the integrity of the judicial system and ensuring that powers are exercised in a manner that is fair, impartial, and in accordance with the law.

POWERS OF THE HIGH COURT UNDER SECTION 482 CR.P.C.

105. Since the petitioner has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C., it would be appropriate to first take

note of the said provision of law, which is reproduced herein-under for reference:

> "**482. Saving of inherent powers of High Court.**—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

106. Powers under Section 482 Cr.P.C., can thus be invoked in any of the three situations prescribed in the statutory provision, i.e. (i) for giving effect to any order passed under Cr.P.C., (ii) for prevention of abuse of process of any Court, or (iii) for securing ends of justice.

I. Judicial Precedents in a Nutshell

107. The principles *qua* the exercise of powers as well as extent of jurisdiction of High Courts under Section 482 Cr.P.C. have been laid down by the Hon'ble Supreme Court in catena of judgments.

108. The Hon'ble Apex in case of ***State of Haryana v. Ch. Bhajan Lal 1992 SCC (Cri) 426,*** had laid down the principles to be considered while quashing FIRs or complaints using extra-ordinary powers or inherent powers. The same are reproduced as under for reference

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 uncontroverted 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 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 Act concerned (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 Act concerned, 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."

(Emphasis supplied)

109. The Hon'ble Apex Court had discussed, at length, the law on the issue in ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*** *2021 SCC OnLine SC 315* and this Court deems it fit to extract the relevant portion of the judgment, which reads as under:

"35. The first case on the point which is required to be noticed is the decision of this Court in the case of ***R.P. Kapur*** **(supra)**. While dealing with the inherent powers of the High Court under Section 561-A of the earlier Code (which is *pari materia* with Section 482 of the Code), it is observed and held that the inherent powers of the High Court under Section 561 of the earlier Code cannot be exercised in regard to the matters specifically covered by the other provisions of the Code; the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice; ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. After observing this, thereafter this Court then carved out some exceptions to the above-stated rule, which are as under:

> "(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.
>
> (ii) **Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.**
>
> (iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that

on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

***

57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of *Khawaja Nazir Ahmad* (supra), the **following principles of law emerge**:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) **However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;**

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr. P.C.is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482 Cr. P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr. P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of *R.P. Kapur* (supra) and *Bhajan Lal* (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

58. Whether the High Court would be justified in granting stay of further investigation pending the proceedings under Section 482

Cr. P.C. before it and in what circumstances the High Court would be justified is a further core question to be considered..."

(Emphasis supplied)

II. What is Abuse of Process of Law

110. Abuse of process of Law can simply be termed as misuse of the legal proceedings to achieve something for which no cause exists, often to harass, intimidate, or gain an unfair advantage over the opposite party. An abuse of process of law will be when it is opined that the continuation or initiation of criminal prosecution will be unfair and unjust on part of the complainant or prosecution.

111. The concept of fair trial does not involve being just and fair only to the prosecution or to an accused. The adjudicative functions of the criminal courts have to be cautiously exercised since initiation or continuation against a person can, at times, be not only unfair to an accused or proposed accused, but being a criminal case, can also affect the reputation and life of such a person.

112. Needless to say, the issue as to whether the institution of a criminal case or initiation of criminal proceedings amounts to abuse of process of law has to be examined in context of facts and circumstances of each case and in light of validity or invalidity of issuance of direction contained in an order challenged before a Court.

III. Sufficiency or Insufficiency of Incriminating material viz. Abuse of Process of Law

113. **There is a difference between inadequacy or insufficiency of material on record connecting the proposed accused with the alleged offences and absence of the same.** In case of absence of any such material, if a Court orders registration of an FIR for offences which are neither discussed nor revealed to have been committed in the complaint and material accompanied with it, such order will come within the purview of abuse of process of law. It can be summed up as a process issued by the Court not justified by law or judicial precedents and thus will amount to improper use of criminal legal process.

114. To do a lawful act in a lawful manner is not actionable and will not amount to abuse of process of law. The complainant had a right to file application as well as complaint as per law before the learned Magistrate. However, it was the duty of the Magistrate concerned to consider the sufficiency or insufficiency of the material on record, and decide that in absence of any material disclosing cognizable offence, criminal law was not set into motion as that would amount to abuse of process of law.

115. A bonafide complainant cannot be denied a remedy for any injury caused to him. However, at the same time, a person cannot cause injury to another person by way of improper use of legal process, as in present case, by setting criminal law into motion against the other by way of a complaint and application filed under Section 156(3) Cr.P.C., which on

the face of it and in view of detailed report of the police, did not disclose commission of cognizable offence by the proposed accused.

116. The Constitutional Courts in such a situation have to allow the relief to such a person who is injured by such order due to such improper use of issuance of process and every Constitutional Court is duty bound to enforce and exercise the jurisdiction to set aside such order which is a step towards ensuring proper use of law and process.

117. It is the duty of a constitutional Court also to be constantly guided by Article 21 of the Constitution which guarantees right to life and liberty to a person which shall not be taken away except by 'due process of law'. Therefore, in case an impugned order amounts to abuse of process of law which is contrary to due process of law, it has to be set aside.

IV. Striking balance between interest of the complainant and reputational injury to the unheard proposed accused

118. The Magistrates play a crucial role in the criminal justice system and they are the first in line of the adjudicatory process of a journey of a criminal case. Therefore, they must exercise their discretion under Section 156(3) Cr.P.C. to identify a frivolous litigation or a litigation without reason or material. While passing an order under Section 156(3) Cr.P.C., the personal liberty and injury to reputation that a man suffers along with the time and money spent defending himself should be kept in mind.

119. Since the Magisterial Courts are exercising extensive power to order police investigation under Section 156(3) Cr.P.C., such power

should be exercised after due application of mind since passing of such order subjects the proposed accused to investigation by police. The orders regarding registration of FIRs need to be passed with great caution after application of judicial mind and by a reasoned order.

120. While exercising power under Section 156(3) Cr.P.C., the Magistrate must scrutinize a complaint filed before them to ensure that it discloses material to support the allegations made therein since they have to not only protect the interest of the State and the complainant, but also the interest of an unheard proposed accused. A similar view, though in context of provisions of Section 202 Cr.P.C., was taken by a decision rendered by Four-judges Bench of the Hon'ble Supreme Court in case of ***Chandra Deo Singh v. Prokash Chandra Bose*** *1964 SCR (1) 639.*

THE CONCLUSION OF THE COURT

121. Having carefully examined the contents of complaint and application filed by respondent no. 1, the preliminary inquiry conducted by the police, the contents of order impugned before this Court, and having considered the discussion made in preceding paragraphs and examined the facts and circumstances of the present case on the anvil of the principles laid down by the Hon'ble Apex Court in ***Bhajan Lal*** *(supra)* and ***Neeharika Infrastructure*** *(supra)*, this Court reaches the following conclusions:

(i) The respondent no. 1 had not levelled any allegation against the petitioner in the complaint which he had lodged with the concerned police officials.

(ii) The single line averred by respondent no. 1 against the petitioner in his complaint and application under Section 156(3) Cr.P.C. filed before the learned Magistrate, on the face of it, does not constitute any offence or make out any case against the petitioner.

(iii)Even if the entire allegations made in the complaint lodged with the police or before the learned Magistrate as well as the inquiry conducted by the police in that regard are accepted in their entirety, the same do not disclose commission of any offence by the present petitioner.

(iv)The records of the case reveal that the present case is not a case of lack of sufficient evidence against the petitioner, but rather a case with no incriminating material whatsoever against him.

(v) Given that the allegations levelled by respondent no. 1 primarily pertain to an alleged hate speech delivered by proposed accused no. 2, and considering that there is no concept of vicarious liability in criminal law regarding such alleged offences, initiating criminal proceedings against the present petitioner would undoubtedly constitute an abuse of the legal process.

(vi)The learned Magistrate overlooked the crucial distinction between the duty imposed on the police under Section 154 Cr.P.C. to register an FIR when a complaint reveals a cognizable offence, and the powers vested in Magistrates under Section 156(3) Cr.P.C. which necessitates the application of judicial mind and scrutiny of the material on record.

(vii) The impugned order passed by the learned Magistrate reflects lack of application of judicial mind, for the reasons that (a) it fails to record any reasons whatsoever for directing registration of FIR; (b) it does not record as to commission of which cognizable offences was disclosed from the perusal of complaint and application filed before it, against the proposed accused persons; and (c) it fails to acknowledge or refer to the contents of preliminary inquiry conducted by the police and submitted before the concerned Magistrate by way of Action Taken Report, even for the purposes of disagreeing with the same and ordering registration of FIR, even though the learned Magistrate had himself called for the same.

122. The recognized purpose of criminal adjudicatory process is that an accused or a proposed accused, if essentially connected to incriminating evidence in a complaint, should be brought within the ambit of law. However, an unmeritorious complaint containing no incriminating material against an accused should not result in orders of registration of FIRs as such proceedings will certainly amount to abuse of process of criminal law.

123. The duty that a Court of law owes to its citizens who approach them as litigants is protected when the material placed on record which reveals commission of a cognizable offence is acted upon. While doing so, the Courts have to be cautious in identifying cases where such material is absent and protecting an accused or proposed accused by way of a reasoned order to avoid abuse of process of law. Absence of

reasons brings into question the propriety of an order being not based on judicial precedents, material on record or reasons for its conclusion. The Courts should embrace the method of passing a reasoned order based on judicial precedents and law as well as the material placed before it, which is reflected in its order or judgments. Through such reasoned orders, the Courts can order for registration of FIR against persons who cross criminal boundaries without lawful justification, or conversely, reject such applications where it seems that the accused or proposed accused can be a possible victim of abuse of process of law by initiation of criminal proceedings.

BEFORE PARTING WITH THIS CASE...

124. There is no place for hatred or communal disharmony in a civilised society. In a country like India, not one or two, rather all the communities have always respected each other and have lived a harmonious life. There is neither any place for hate speeches by any community against any person or place, nor there is any place for vandalism of idols or religious places of any community. At the same time, the right of every person to be protected from malicious prosecution also has to be guarded and it is to be ensured that FIRs be not directed to be registered in absence of any material on record, in casual and trivial manner without recording satisfaction about commission of cognizable offence and without passing a reasoned order, especially in cases where the learned Magistrate disagrees with the detailed Action Taken Report filed by the police on the basis of preliminary inquiry conducted by it. Charges of disturbing communal

harmony, national integrity and promoting enmity between different groups are serious charges against any person, whose patriotism and credentials as a well meaning citizen of the country are questioned by registration of such FIR.

125. **Keeping in mind the sensitive nature of the allegations and the fact that no evidence of communal disharmony had come on record during the preliminary inquiry conducted by police, this Court advices that the orders for registration of the FIR filed by any community should be passed with more circumspection.** Fortunately, no untowards incident had taken place after the alleged incident and when the application was filed before the learned Magistrate, and the residents of the area belonging to both communities i.e Hindus and Muslims had rather requested the police not to take cognizance of the complaint as there was no disharmony or apprehension of riots etc. in their area. On the contrary, both the communities were living peacefully with each other.

126. In this context, this Court also notes that non-discrimination is the hallmark of judiciary, and the Courts have never taken issues concerning communal peace lightly since tolerance of cultural and religious values of different communities are key to the success of nation building.

127. However, it is also to be kept in mind that a person against whom FIR is being ordered to be registered for no reason will have his reputation at stake. In cases as the present one, against this backdrop, this Court finds merit in the present petition since the complaint filed before the learned Magistrate did not fulfil the criteria of presence of

incriminating material disclosing any connection of the petitioner with the alleged act of organising the speech delivered by one Swami ji, whose identity also remains unknown.

128. In the present case, the learned Magistrate failed to consider and follow the judicial precedents and guidelines for exercise of power under Section 156(3) Cr.P.C., and this Court has to use its inherent power to prevent this abuse of process of law to ensure that relief is not denied to a litigant against whom criminal law has been ordered to be set in motion on the basis of lack of any incriminating material or allegations. It is also taken note of by this Court that use of its inherent power judiciously is a step towards protecting its own process from abuse.

129. The Magisterial Courts have to remain vigilant and conscious that in cases such as present one, directing registration of FIR without going through the facts of the case and the report filed by the police may rather ignite communal disharmony among the residents of concerned area as no disharmony or communal riots had taken place despite the incident of vandalism of idols of Hindu Gods and Goddesses and the matter had been resolved amicably between the members of two communities and a separate case of vandalism already stood registered and accused persons were under trial. The issue stood forgotten and buried for good in the concerned area. It is also a case where the members of one community, who allegedly were target of alleged hate speech, had themselves collectively requested the IO/SHO not to pay heed to any frivolous or malicious complaint filed regarding any alleged

hate speech or any danger of riots, as both the communities were living in perfect harmony within the same locality.

130. It is to be noted at the cost of repetition that the complaint qua the present petitioner was not a case of insufficient material but of no material at all. The Court also takes note of the fact that though the Magistrate mentions that from perusal of the complaint, commission of cognizable offence is revealed there is no allegation in the entire complaint itself or in the Action Taken Report about any act of commission or omission on part of the present petitioner.

131. This Court is, therefore, constrained to observe that the Magisterial power may be unlimited but it is not unfettered and should be used not only with utmost caution and vigilance, but also with circumspection after carefully going through the contents of the complaint and the Action Taken Report, if any, filed by the police.

132. For the foregoing reasons, this Court is of the view that this is a fit case to invite invocation of powers under Section 482 of Cr.P.C. to quash the order directing registration of the FIR on the basis of complaint and application filed under Section 156(3) Cr.P.C. against the present petitioner. This Court also holds that permitting continuation of criminal proceedings against the present petitioner would certainly result in abuse of process of law and miscarriage of justice.

133. In such circumstances, this Court is inclined to set aside the impugned order dated 18.02.2020. Accordingly, the present petition along with pending application is disposed of in above terms.

134. The judgment be brought to the notice of the Director, Academics, Delhi Judicial Academy and learned Registrar General of this Court, for circulation.

135. Original record be sent back to the concerned Trial Court.

136. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J.

JULY 21, 2023/ns