

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 13th OF DECEMBER, 2023

MISC. CRIMINAL CASE NO. 54223 of 2023

BETWEEN:-

**MONU UPADHYAY S/O SHRI SANTOSH
UPADHYAY, AGED ABOUT 34 YEARS, R/O
BEEJASEN ROAD LAHAR DISTRICT BHIND
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI GAURAV MISHRA - ADVOCATE)

AND

**STATE OF MADHYA PRADESH THROUGH POLICE
STATION LAHAR DISTRICT BHIND (MADHYA
PRADESH)**

.....RESPONDENT

(BY SHRI RAJEEV UPADHYAY - ADVOCATE)

*This application coming on for admission this day, the court
passed the following:*

ORDER

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 is preferred by the petitioner seeking quashment of the FIR registered at crime No.290/2023 at Police Station Lahar District Bhind for the offence under Sections 505(2) and 188 of IPC.
2. Brief facts of the case are that petitioner who is a correspondent

made a post on the social media raising doubt in relation to conduct of free and fair election in Lahar Legislative Assembly Constituency. Treating the said post of the petitioner as derogatory and public mischief, FIR got registered by Naib Tahsildar, Lahar against the petitioner and another person for commission of offence under Sections 505(2) and 188 of IPC.

3. It is the submission of learned counsel for the petitioner that since there was no order promulgated by a public servant lawfully empowered to abstain from a certain act, which has been disobeyed by the petitioner, therefore, no offence under Section 188 of IPC is made out. Further petitioner is a correspondent and he being part of Fourth Pillar of the Democracy, expressed his opinion on the social media for which he is empowered under Article 19(1)(a) of the Constitution. Learned counsel for the petitioner further submits that if the allegations are taken as true then also no case for offence under Section 505(2) and 188 of IPC is made out against the petitioner. Since the post was in relation to an IAS officer, therefore, in a very haste manner, the FIR has been registered against the petitioner. To bolster his submission, learned counsel for the petitioner placed reliance on the judgment of Apex Court in the matter of **Kedar Nath Singh Vs. Union of India, AIR 1962 SC 955** and **Amish Devgun Vs. Union of India, (2021) 1 SCC 1**. Thus, prayed for quashing of the aforesaid FIR registered against the petitioner.
4. Learned counsel for the respondents opposed the prayer and submitted that petitioner tried to disturb the public peace during the period of Model Code of Conduct and the act of the petitioner

amounts to disregard to the order of a public officer and public mischief, therefore, rightly the case has been registered against the petitioner. It is further submitted that only trial will unfold the truth and petitioner has to prove his innocence before the trial Court.

5. Heard.
6. Freedom of speech is one of the core pillars upholding the Constitutional Spirit and democratic process and thus protection of it is essential. Free speech exists when citizenry can express its opinion including views that are critical towards the government without fearing backlash, such as being put into prison or receiving threats of violence. Democracy's goal is to have a plural and tolerant society. For this to happen successfully, citizenry should be able to speak freely and openly about how they would like to be governed. This exchange of ideas and opinions is not just a once off on election day, rather it is an on-going two-way communication which happens throughout a Government's term. Although certain exceptions are enumerated in Article 19 of the Constitution, but it must satisfy the contingencies contained therein.
7. This is a case where petitioner is seeking quashment of FIR emanated from his social media post wherein he has raised doubt about conducting free and fair election in Lahar Legislative Assembly Constituency. Petitioner by profession is a correspondent and the relevant part of his social media post is being quoted as under:

"**भिट् ल्हर कुनव ब्रेकिग ल्हर विज्ज सभ में आमी कुनव**

हेतु निरिचम वर लर विन सभ में बयये गये प्रेसक कन्दु
 राजर. बगे (आई.ए.एस.) निपुनरं भयमुकमसुनकाने
 में हे नकम भयित गमीणमसुतर्ये ने हिमस कर प्ररस
 के भेज शिकरसी फर फुनेके अशंत प्ररसनने सधे चुपी अरै
 ते अरै सूख फुंघे प्रेसकके पसते सूख संजन में अमेके
 अशंत प्रेसक भी दूर मैन भरत निरिचम अरै भिड प्ररसनके
 बसके बतन्ही स्त्री अरै नही कभी हे सली हे”

Perusal of aforesaid quotation clearly indicates that on the basis of said post, petitioner cannot be saddled with the allegations of promoting enmity, hatred or ill-will between different classes of the society or causing any public mischief.

8. Article 19 of the Constitution provides Freedom of Speech and Expression and if the post allegedly made by the petitioner is taken into consideration, then from the said post no derogatory comment or public mischief is reflected. Conducting free and fair elections in the Legislative Assembly particularly in Bhind/ Chambal area is always a paramount consideration and if doubt is raised by anybody in relation to conduct of free and fair election, then by no stretch of imagination it constitutes offence under Section 505(2) of IPC as the social media post of petitioner is not creating or promoting enmity, hatred or ill -will between different classes of the society and further no public mischief as provided in Section 188 of IPC is caused by the petitioner.
9. From the social media post of petitioner, it is manifested in unambiguous terms that the perception of Naib Tahsildar, Lahar as

well as the FIR lodged by him is misconceived. It is not in conformity with the prescribed law. There is nothing to consider that the social media post of petitioner was likely to promote feelings of enmity, hatred or ill will between different classes of society or was likely to disturb public peace and tranquility. It does not violate any provision of the relevant law; and does not tend to incite people to commit a crime, cause disorder or violence or breach of law or glorifies violence in any way. Rather, it awakens the people.

10. So far as offence under Section 188 of IPC is concerned, respondent did not show disobedience to any order duly promulgated by public servant so as to frame the petitioner under Section 188 of IPC. Further, according to Section 195 of Cr.P.C. no Court shall take cognizance of offences under Sections 172 to 188 of IPC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Thus, according to this provision, Naib Tahsildar is required to prefer a complaint before the competent Court and directly FIR cannot be registered at police station as it is barred. This issue has been put to rest by the Apex Court in **C. Muniyappan and others Vs. State of Tamilnadu, (2010) 9 SCC 567** and by the Division Bench of Indore High Court in **State of Madhya Pradesh and another Vs. Jyotiraditya Scindia, 2014 SCC Online MP 1684**.

11. It is, thus, clear that the proceedings against the petitioner under [Section 188](#) IPC have been initiated on the basis of the FIR and not on the basis of any complaint in writing of the public servant

concerned as is required by [Section 195\(1\)\(a\)](#) of the Code. The registration of FIR and the launching of proceedings thereafter against the petitioner is not permitted by [the Code](#) and thus, cannot be sustained as it is barred.

12. Merely on the basis of raising doubt in relation to conducting free and fair election in the Lahar Legislative Assembly Constituency, the case for offence under Section 505(2) of IPC has been registered against the petitioner but if the social media post of the petitioner and provisions of Section 505(2) of IPC are put into juxtaposition, then no essential ingredients exists against the petitioner and it merely falls within the ambit of Freedom of Speech and Expression as enshrined in Article 19(1)(a) of the Constitution. It by no stretch of imagination falls within the purview of offence under Section 505(2) of IPC.
13. The Apex Court in the matter of **State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604** laid down the different exigencies under which interference under Section 482 of Cr.P.C. can be made. Following exigencies are as under:
 - “(a) 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;*
 - (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;*

- (c) *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;*
- (d) *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;*
- (e) *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;*
- (f) *where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;*
- (g) *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.”*

The case falls within the category of *prima facie* no case made out against the petitioner.

14. The power under Section 482, Cr.P.C. is extraordinary in nature and has to be used sparingly. It is not to be exercised in a routine manner, but for limited purposes to give effect to any order under the Code, to prevent abuse of process of any Court or otherwise to secure ends of justice. Time and again, Apex Court and various

High Courts, including M.P. High Court, have explained the circumstances when the exercise of such powers would be justified. If from a bare perusal of the FIR or the complaint, it appears that it does not disclose any offence or it appears that it is frivolous, collusive or oppressive from the face of it, the Court may exercise this inherent power to secure the ends of justice. The Apex Court dealt with such aspects in the case of **Ch. Bhajan Lal (supra), Mahesh Chaudhary Vs. State of Rajasthan, (2009) 4 SCC 443, Shakson Belthissor Vs. State of Kerala and Anr, AIR 2010 SC (Supp) 864, Mosiruddin Munshi Vs. Md. Siraj, AIR 2014 SC 3352, Krishnanan Vs. Krishnaveni, AIR 1997 SC 987, Popular Muthiah Vs. State represented by Inspector of Police, (2006) 7 SCC 296, Hamida Vs. Rashid alias Rasheed, (2008) 1 SCC 474, Dr. Monica Kumar Vs. State of U.P., (2008) 8 SCC 781, M.N. Ojha Vs. Alok Kumar Srivastav, (2009) 9 SCC 682, State of A.P. Vs. Gourishetty Mahesh, (2010) 11 SCC 226 and Iridium India Telecom Ltd. Vs. Motorola Incorporated, (2011) 1 SCC 74.**

15. In the conspectus of facts and circumstances of the case as well as legal provisions, the FIR registered against the petitioner is misconceived and it is not in conformity with the prescribed law. The FIR registered against the petitioner is in confrontation with the Fundamental Rights of petitioner as guaranteed by the Constitution of India under Article 19. The social media post of petitioner merely falls under Freedom of Speech and Expression and does not constitute any offence under Section 505(2) of and 188 of IPC.

16. In view of the aforesaid, the petition preferred by the petitioner is **allowed**. FIR registered at crime No.290/2023 at Police Station Lahar District Bhind for the offence under Sections 505(2) and 188 of IPC against the petitioner is hereby quashed. Petitioner is discharged from all the offences/allegations.
17. Petition stands **allowed** and **disposed of**.

Anil*

(ANAND PATHAK)
JUDGE