

GAHC010175912016



2025:GAU-AS:10817

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./988/2016

KONGKON BORTHAKUR
S/O KAMALA KANTA BORTHAKUR T.R. PHUKAN ROAD, JORHAT- 785001,
P.S. JORHAT- 785001.

VERSUS

THE STATE OF ASSAM and ANR.

2:FARID ISLAM HAZARIKA
PRESIDENT AAMSU SIVASAGAR
S/O LT. KHADIM ISLAM HAZARIKA RANGHAR CHARIALI
P.S. AND DIST. SIVASAGAR
PIN - 78566

Advocate for the Petitioner : MS.A NEOG, MR.K GOSWAMI,MR.P K GOSWAMI,MS.J GOGOI

Advocate for the Respondent : , PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE PRANJAL DAS

JUDGMENT & ORDER (ORAL)

07.08.2025

1. Heard Mr. A. Neog, learned counsel assisted by Mr. A. Chandalia, learned counsel for the petitioner. Also heard Mr. K. Baishya, learned Additional

Public Prosecutor for the State.

2. The instant petitioner **Kongkon Borthakur**, stated to be a journalist, seeks to invoke the provisions of Section 482 of Cr.PC for quashing of FIR dated 11.11.2016, which led to registration of **Sivasagar P.S Case No.1008/2016 under Section 153(A)/34 of the IPC.**

3. The informant namely, Farid Islam Hazarika, President of All Assam Muslim Students Union, herein after called AAMSU (Sivasagar) has been impleaded as respondent no.2.

4. As per office note dated 20.03.2025, service report upon respondent no.2 was duly served, however he has not chosen to appear.

5. The learned counsel for the petitioner has taken the Court through the original version of the ejahar dated 11.11.2016. The learned counsel has also taken the Court through the original newspaper publication dated 08.11.2016 in the newspaper "Dainik Janambhumi", along with its English translation, on the basis of which the ejahar was lodged.

6. The newspaper item is stated to be a journalistic report made by the petitioner accused after ground research and pursuant to publication of the same; the ejahar in question came to be filed by respondent no.2 representing a certain organization.

7. In the leading judgment of the **State of Haryana Vs. Bhajan Lal**, reported in **1992 SCC (Cri.) 426**, which has laid down the foundations of law governing the field of quashing in exercise of inherent powers; various illustrations and criteria have been given for exercising such powers; one of which is that if the allegations in the ejahar prima facie do not make out any offence, then the said FIR can be quashed in exercise of inherent powers.

8. The principles laid down in ***Bhajan Lal(Supra)***, have been built upon by many subsequent decisions of the Hon'ble Supreme Court and today there is a large body of case laws governing the field of quashing invoking inherent powers. With regard to the quashing of FIR, a reference may be made to ***Neeharika Infrastructure Private Limited Vs. State of Maharastra and Others, reported in (2021) 19 SCC 401.***

9. In support of his submission, learned counsel for the petitioner has relied on the following case laws-

- a) ***State of Haryana Vs. Bhajan Lal***, reported in ***1992 SCC (Cri.) 426***
- b) ***Patricia Mukhim Vs. State of Meghalaya***, reported in ***(2021) 15 SCC 35***
- c) ***Bilal Ahmed Kaloo Vs. State of A.P.***, reported in ***(1997) 7 SCC 431***

10. Before proceeding further, the provisions of Section 153A of IPC may be reproduced herein below –

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.

11. In the case of ***Patricia Mukhim Vs. State of Meghalaya***, reported in **(2021) 15 SCC 35**, it has been held in para 9 that –

9. Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquility, the law needs to step in to prevent such an activity. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153A IPC and the prosecution has to prove the existence of mens rea in order to succeed.

12. The case laws pertaining to interpretation of Section 153A IPC also has a long history and one of the earlier decisions in this regard is the case of ***Bilal Ahmed Kaloo Vs. State of A.P.***, reported in **(1997) 7 SCC 431**.

13. The principles laid down in ***Bilal Ahmed Kaloo(Supra)***, have been referred to para – 11 of ***Patricia Mukhim Vs. State of Meghalaya***, reported in **(2021) 15 SCC 35** and the relevant para is reproduced as follows -

11. In Bilal Ahmed Kaloo v. State of A.P. , this Court analyzed the ingredients of Sections 153 A and 505 (2) IPC. It was held that Section 153 A covers a case where a person by "words, either spoken or written, or by signs or by visible representations", promotes or attempts to promote feeling of enmity, hatred or ill will. Under Section 505 (2) promotion of such feeling should have been done by making a publication or

circulating any statement or report containing rumour or alarming news. Mens rea was held to be a necessary ingredient for the offence under Section 153 A and Section 505 (2). The common factor of both the sections being promotion of feelings of enmity, hatred or ill will between different religious or racial or linguistics or religious groups or castes or communities, it is necessary that at least two such groups or communities should be involved. It was further held in Bilal Ahmed Kaloo (supra) that merely inciting the feelings of one community or group without any reference to any other community or group Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 (1997) 7 SCC 431 9 cannot attract any of the two sections. The Court went on to highlight the distinction between the two offences, holding that publication of words or representation is sine qua non under Section 505. It is also relevant to refer to the judgment of this Court in Ramesh v. Union of India in which it was held that words used in the alleged criminal speech should be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. The standard of an ordinary reasonable man or as they say in English law "the man on the top of a Clapham omnibus" should be applied.

14. Hence, it is clear that for a successful prosecution or initiation of prosecution under Section 153A of IPC, there has to be two communities involved; there must be *mens rea* on the part of the accused to create enmity between different groups, which may be defined by religion,

language, caste, race etc; and there must also be an intention to incite people to violence on the basis of such enmity created between the groups.

15. In the backdrop of these case laws, I come back to the instant case. A careful perusal of the newspaper report reveals that it was a kind of write up based on journalistic research and highlighting an issue of religious fundamentalism in the concerned area; demographic threat posed by illegal migrants from a neighboring country and also some militant activities associated with such fundamentalism.

16. The respondent no.2 was aggrieved by the said report and sought the prosecution of the petitioner on the allegation that, by this report, the petitioner was creating disharmony between communities in an area known for its social harmony and was attempting to disturb the communal peace and harmony among different demographic groups.

17. As already stated, the write up, *prima facie*, is a result of ground research, whereby the journalist is highlighting some concerns about religious fundamentalism; the influx of illegal migrants and also of certain militant activities carried out by fundamentalist groups.

18. Upon perusal of these materials and keeping in mind the core principles laid down by the Hon'ble Supreme Court regarding the essential ingredients of Section 153A of IPC – I am of the considered view that the ejahar does not meet the criteria laid down by the aforementioned case laws and that it cannot be said that the petitioner, as the accused, intended to create enmity or incite violence between different population groups with the requisite *mens rea*.

19. Needless to say that it is the core duty of journalism to raise burning issues, which matter to society. Raising concerns about illegal migrants, religious fundamentalism, militant activities and demographic threats to the indigenous people cannot, by itself, be construed as an attempt to create enmity between groups or to incite violence.

20. In any case, upon examining the newspaper report that gave rise to the allegations in the ejahar - I find that , prima facie, the petitioner accused as a journalist has not cast aspersions on any ethnic or religious group *per se*.

21. Accordingly, in light of facts and circumstances and in the backdrop of the aforesaid discussion – I find merit in the petition. The proceedings of **Sivasagar P.S Case No.1008/2016 under Section 153(A)/34 of the IPC, arising from ejahar dated 11.11.2016** lodged by respondent no.2, are hereby **quashed** in their entirety.

22. The instant criminal petition stands **allowed** and **disposed of** on the aforesaid terms.

JUDGE

Comparing Assistant