A.F.R.

Court No. - 28

Case :- APPLICATION U/S 482 No. - 32703 of 2015
Applicant :- Arun Jaitley
Opposite Party :- State Of U.P.

Appearance:

Mr.Tarun Agrawal, Mr. Manindar Singh Gill, Senior Advocate, Mr. Ravi Kant, Senior Advocate, Mr. Nalin Kohli .... for the applicant.

Mr. V.B. Singh, Advocdate General, Mr. Imran Ullah, Additional Advocate General, Mr. Akhilesh Singh, Government Advocate ... for the opposite party.

Hon'ble Yashwant Varma,J.

The applicant seeks to invoke the inherent powers of the Court conferred by Section 482 Cr.P.C. for quashing of Complaint Case No. 382 of 2015 and an order dated 19.10.2015, passed by the Judicial Magistrate, Kulpahar, Mahoba, U.P.

A. BACKGROUND FACTS

The record reveals that the Judicial Magistrate taking suo moto cognizance has proceeded to summon the applicant under Sections 124 A and 505 of the Penal Code. The concerned Magistrate has taken cognizance of the alleged offences on the basis of an article written by the applicant and posted on his Facebook page. The article is titled as **'NJAC Judgement-An Alternative View'.** The Magistrate has recorded that no citizen has a right to disrespect the three pillars of our democracy namely, the Executive, Legislature and the Judiciary. He then proceeds to record that an order of a Court can be questioned only by following a procedure prescribed by law. The order then states that

no person is entitled to create or generate hatred or contempt against an elected Government established by law. The Magistrate upon recording the above conclusions holds that the comments made by the applicant undoubtedly spread hatred and contempt against a duly elected Government and accordingly, in his opinion, the applicant prima facie appears to have committed offences under Section 124A and 505 I.P.C.

Referring to the provisions of Section190(1)(c), the Magistrate recorded that the above mentioned section of the Criminal Procedure Code conferred upon him a power to take suo moto cognizance. He then records that the power to take suo moto cognizance under clause (c) of sub-Section (1) of Section 190 of Cr.P.C. is not trammelled by the territorial jurisdiction of a Magistrate and that since the comments made by the applicant were widely published in the print and electronic media throughout the nation, it was open to a Magistrate anywhere in the country to exercise suo moto powers. He accordingly, proceeded to take cognizance under Section 190(1)(c) of the Criminal Procedure Code and issued summons to the applicant seeking his appearance before the Court on 19 November 2015.

The views expressed by the applicant in the article authored by him and dated 18 October 2015 is a critique of a judgement rendered by a Constitution Bench of the Supreme Court of India[1] which ruled upon the validity of the National Judicial Appointments Commission Act, 2014 and the Ninety Nineth Constitutional amendment. The excerpts of the said article read as follows:

> *"The judgement ignores the larger constitutional structure of India. Unquestionably, independence of the judiciary is a part of the*

1 Supreme Court Advocates on Record Association v. Union of India [Writ Petition (Civil) No. 13 of 2015 decided on 16 October 2015]

basic structure of the Constitution. It needs to be preserved. But the judgement ignores the fact that there are several other features of the Constitution which comprise the basic structure. The most important basic structure of the Indian Constitution is Parliamentary democracy. The next important basic structure of the Indian Constitution is an elected Government which represents the will of the sovereign. The Prime Minister in Parliamentary democracy is the most important accountable institution. The Leader of the Opposition is an essential aspect of that basic structure representing the alternative voice in Parliament. The Law Minister represents a key basic structure of the Constitution; the Council of Ministers, which is accountable to Parliament. All these institutions, Parliamentary sovereignty, an elected Government, a Prime Minister, Leader of Opposition, Law Minister are a part of the Constitution's basic structure. They represent the will of the people. The majority opinion was understandably concerned with one basic structure- independence of judiciary - but to rubbish all other basic structures by referring to them as "politicians" and passing the judgement on a rationale that India's democracy has to be saved from its elected representatives. The Indian democracy cannot be a tyranny of the unelected and if the elected are undermined, democracy itself would be in danger. Are not institutions like the Election Commission and the CAG not credible enough even though they are appointed by elected Governments?

The judgement interprets the provision of Article 124 and 217 of the Constitution. Article 124 deals with the appointment of Judges in the Supreme Court and Article 217 deals with the appointment of Judges of the High Court.

Both provide for the appointment to be made by the President in consultation with the Chief Justice of India. The mandate of the Constitution was that Chief Justice of India is only a 'Consultee'. The President is the Appointing Authority. The basic principle of interpretation is that a law may be interpreted to give it an expanded meaning, but they cannot be rewritten to mean the very opposite. In the second Judge's case, the Court declared Chief Justice the Appointing Authority and the President a 'Consultee'. In the third Judge's case, the courts interpreted the Chief Justice to mean a Collegium of Judges. President's primacy was replaced with the Chief Justice's or the Collegium's primacy. In the fourth Judge's case (the present one) has now interpreted Article 124 and 217 to imply 'Exclusivity' of the Chief Justice in the matter of appointment excluding the role of the President almost entirely.

No principle of interpretation of law anywhere in the world, gives the judicial institutions the jurisdiction to interpret a constitutional provision to mean the opposite of what the Constituent Assembly had said. This is the second fundamental error in the judgement. The court

can only interpret - it cannot be the third chamber of the legislature to rewrite a law.

Having struck down the 99th Constitutional Amendment, the Court decided to re-legislate. The court quashed the 99th Constitutional Amendment. The court is entitled to do so. While quashing the same, it re-legislated the repealed provisions of Article 124 and 217 which only the legislature can do. This is the third error in the judgement.

The article then ends with the following words:

As someone who is equally concerned about the independence of judiciary and the sovereignty of India's Parliament, I believe that the two can and must co-exist. Independence of the judiciary is an important basic structure of the Constitution. To strengthen it, one does not have to weaken Parliamentary sovereignty which is not only an essential basic structure but is the soul of our democracy."

B. SUBMISSIONS

The learned Senior Counsel appearing in support of this application has raised both procedural as well as fundamental objections to the proceedings initiated by the Magistrate. Elaborating his submissions on the aspect of the procedural flaws, he submits that Section 124A as well as Section 505 IPC are both offences which fall within the ambit of Section 196 of the Criminal Procedure Code. Referring to the provisions of Section 196, the learned counsel submits that there is a complete bar on any Court taking cognizance of an offence falling under Chapter VI of the Penal Code as well as Section 505 without the previous sanction of the Central Government or of the State Government. It is, therefore, his submission that the Magistrate clearly acted in excess of jurisdiction in proceeding to take cognizance and summoning the applicant without complying with the provisions of Section 196. Referring to a judgement rendered by two learned Judges of the Supreme Court in **State of Maharashtra Vs. Dr Budhikota**

Subbarao[2], he submits that the use of the words *'no'* and *'shall'* in Section 196 make it abundantly clear that the bar on the power of a Court taking cognizance of an offence is absolute and complete. He submits that Section 196 therefore, clearly barred the Magistrate from assuming jurisdiction or even taking notice. He has also placed reliance on an order of the Supreme Court in **Manoj Rai and Others Vs. State of M.P.**[3] to contend that in a case where no sanction was given in accordance with the provisions of Section 196, the entire proceedings were liable to be quashed. On this aspect of the matter, he has further placed reliance upon a judgement rendered by a learned Single Judge of the Andhra Pradesh High Court in **Kandi Buchi Reddy Vs. State of Andhra Pradesh**[4]. This was a case which dealt with a chargesheet filed against the petitioner alleging commission of offences under Section 124A and 506 IPC. The issue of sanction as required under Section 196 of the Code of Criminal Procedure directly fell for consideration and stood answered in the following terms

> "*Admittedly, Section 124-A IPC is an offence contained under Chapter-VI of the Indian Penal Code. Therefore, sanction of the appropriate Government is a pre-requisite for taking cognizance of the offence under the said Section. The learned Public Prosecutor has fairly conceded that before the charge-sheet was filed, no sanction has been obtained."*

The second limb of the submissions advanced by the learned Senior Counsel was with respect to the scope and ambit of Sections 124-A and 505 of the Penal Code. It was submitted that the article written by the applicant was a fair criticism of the judgement rendered

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2 (1993) 3 SCC 339

3 (1999) 1 SCC 728

4 1999(3)ALD 193

by the Constitution Bench and that nothing contained therein would qualify as amounting to a commission of an offence either under Section 124A or Section 505 of the Penal Code. The article, he would submit, can by no stretch of imagination be said to contain words which were aimed to bring or attempted to bring into hatred or contempt a Government established by law. Referring to the ingredients of Section 505 of the Penal Code, he submits that the article neither caused nor was it intended to cause any fear or alarm amongst the general public nor did it in any manner tend to induce any person to commit an offence against the State or against public tranquillity. He further submits that the applicant had authored the article bonafidely and in exercise of the fundamental rights guaranteed under Article 19(1)(a) of the Constitution of India. He submits that criticism of a judgement is not contempt and in any view of the matter can never be described as sedition.

The learned Advocate General who appeared in the proceedings stated that no sanction had been accorded for the initiation of proceedings by the concerned Magistrate and that the suo moto cognizance taken by him as well as the issuance of summons was not preceded by any order having been made under Section 196 of the Criminal Procedure Code.

C. PROCEDURAL ILLEGALITY

The provisions of Sub Section 190 of the Criminal Procedure Code are prefaced by the words *'subject to the provisions of this Chapter'*. Clause (c) of sub-Section (1) confers a power on the Magistrate to take cognizance of an offence upon information received from any person other than a police officer or upon his own knowledge

that such offence has been committed. The jurisdiction of the Magistrate therefore, to take suo moto cognizance of an offence is not in doubt. What however, falls for consideration is whether such suo moto cognizance can be taken without following the procedure prescribed under Section 196 of the Code of Criminal Procedure. The Court must take note of the fact that Section 190(1)(c) is not given overriding effect over other provisions falling in Chapter XIV of the Criminal Procedure Code. Neither does Section 196 carve an exception in respect thereof or exclude clause (c) of Section 190 (1) from the width of its operation.

In the opinion of the Court, therefore, cognizance taken under either of clauses (a), (b) or (c) of Section 190(1) would have to conform with the requirements of Section 196. This clearly flows from the opening words of Section 190 itself, which make it subject to the provisions of Chapter XIV. Section 505 of the Penal Code finds specific mention in Section 196 Cr.P.C. Admittedly, Section 124A stands comprised in Chapter VI of the Penal Code and would therefore, stand covered in clause (a) of Section 196. It therefore, clearly follows that the Magistrate could not have taken cognizance except with the previous sanction of the Government.

The language employed in Section 196 is para materia to that used in Section 197, which provision fell for consideration before the Supreme Court in **State of Maharashtra** *(supra)*. Their Lordships held the requirements of that provision to be of a mandatory character. Taking note of the use of the words ‘no’ and ‘shall’ in the said provision, their Lordships proceeded to hold that it was abundantly clear that the bar on the exercise of the power of the Court to take

cognizance of any offence is absolute and complete. The bar was held to stand extended to a Court from entertaining a complaint or even taking notice or exercising jurisdiction. The principles enunciated in **State of Maharashtra** *(supra)* stands applied in **Manoj Rai** *(supra)* and **Kandi Buchi Reddy** *(supra).*

The requirement of sanction as a prerequisite for taking cognizance was a principle which was reiterated by a learned Judge of the Calcutta High Court in **Aveek Sarkar Vs. State of West Bengal**[5]**.** The learned Judge held that the absence of sanction was fatal and could not be brought within the pale of section 460 (e) of the Criminal Procedure Code or in other words characterized as an irregularity of procedure which would not vitiate proceedings.

In light of the above, this Court holds that the Magistrate clearly erred in proceeding to exercise jurisdiction under Section 190(1)(c) and therefore, the order taking cognizance of the alleged offence and issuance of summons cannot be sustained.

The order of the Magistrate in light of the submissions advanced before this Court is liable to be tested on its merits also. The expression of views by the applicant in the article in question is stated to have in the opinion of the Magistrate resulted in a prima facie commission of offences referable to Section 124A and Section 505 IPC.

D. SEDITION AND PUBLIC TRANQUILITY

The article is on record and stands appended to the paper book as Annexure-3. Having gone through the same, this Court now proceeds to examine as to whether its contents can by any stretch of imagination

5 CRR 2337 of 2013 decided on 1 April 2015

be said to have resulted in commission of offences under Section 124A or Section 505 of the Penal Code. Section 124 A of the Penal Code reads as under:

> *"Whoever by words, either spoken or written, or by signs or by visible representation, or otherwise, brings or attempts to bring into hatred to contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with transportation for life or any shorter term to which fine may be added or with imprisonment which may extend to three years, to which fine may be added, or with fine.*
>
> *Explanation 1. The expression "disaffection" includes disloyalty and all feelings of enmity.*
>
> *Explanation 2. Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exiting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section.*
>
> *Explanation 3. Comments expressing disapprobation of the administrative of other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."*

The ingredients of an offence referable to Section 124A fell for consideration before a Constitution Bench of the Supreme Court in **Kedar Nath Singh Vs. State of Bihar**[6]. Their Lordships lucidly dwelt upon the interplay between Section 124 A of the Penal Code and Article 19 of the Constitution of India and declared the law in the following terms:

> "**24.** In this case, we are directly concerned with the question how for the offence, as defined in s. 124A of the Indian Penal Code, is consistent with the fundamental right guaranteed by Art. 19(1)(a) of the Constitution, which is in these terms :
>
> "19. (1) All citizens shall have the right.
>
> (a) to freedom of speech and expression..."

6 AIR 1962 SC 955

> This guaranteed right is subject to the right of the legislature to impose reasonable restrictions, the ambit of which is indicated by clause (2), which, in its amended form, reads as follows :
>
> "(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

It has not been questioned before us that the fundamental right guaranteed by Art. 19(1)(a) of the freedom of speech and expression is not an absolute right. It is common ground that the right is subject to such reasonable restrictions as would come within the purview of clause (2), which comprises (a) security of the State, (b) friendly relations with foreign States, (c) public order, (d) decency or morality, etc., etc. With reference to the constitutionality of s. 124A or s. 505 of the Indian Penal Code, as to how far they are consistent with the requirements of clause (2) of Art. 19 with particular reference to security of the State and public order, the section, it must be noted, penalises any spoke or written words or signs or visible representations, etc., which have the effect of bringing, or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law. Now, the expression "the Government established by law" has to be distinguished from the person's for the time being engaged in carrying on the administration. "Government established by law" is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence the continued existence of the Government established by law is an essential condition of the stability of the State. That is why 'sedition', as the offence in s. 124A has been characterised, comes under Chapter VI relating to offences against the State. Hence any acts within the meaning of s. 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which

generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.

25. It has not been contended before us that if a speech or a writing excites people to violence or have the tendency to create public disorder, it would not come within the definition of 'sedition'. What has been contended is that a person who makes a very strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of Government or acts of public officials, might also come within the ambit of the penal section. But, in our opinion, such words written or spoke would be outside the scope of the section. In this connection, it is pertinent to observe that the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with view to punishing offences against the State, is undertaken. Such a legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the sine quo non of a democratic form of Government that our Constitution has established. This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words, which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. The Court, has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambit of a citizen's fundamental right guaranteed under Art. 19(1)(a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order. We have, therefore, to determine how far the Sections 124A and 505 of the Indian Penal Code could be said to be within the justifiable limits of legislation. If is held, in consonance with the views expressed by the Federal Court in the case of Niharendu Dutt Majumdar v. The King Emperor (1942) F.C.R. 38 that the gist of the offence of 'sedition' is incitement to violence or the tendency or the intention to create public disorders by words spoken or written, which have the tendency or the effect of bringing the Government established by law into hatred or contempt or creating disaffection in the sense of disloyalty to the State in other words bringing the law into line with the law of sedition in England, as was the intention of the legislators when

> they introduced s. 124A into the Indian Penal Code in 1870 as aforesaid, the law will be within the permissible limits laid down in clause (2) of Art. 19 of the Constitution, if on the other hand we give a literal meaning to the words of the section, divorced from all the antecedent background in which the law of sedition has grown, as load down in the several decisions of the Judicial Committee of the Privy Council, it will be true to say that the section is not only within but also very much beyond the limits laid down in clause (2) aforesaid."

The Supreme Court in **Nazir Khan Vs. State of Delhi**[7] explained "sedition" in the following words: -

> "37. Section 124A deals with 'Sedition'. Sedition is a crime against society nearly allied to that of treason, and it frequently precedes treason by a short interval. ……..The object of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion…"

The above guiding principles laid down by the Supreme Court in the judgments noted above came to be followed in a recent judgment of the Bombay High Court. Two learned judges of the Bombay High Court in **Sanskar Marathe Vs. State of Maharashtra**[8] were faced with a case of a political cartoonist who was alleged to have defamed Parliament. The criminal complaint alleged that the cartoons apart from being defamatory also amounted to acts of sedition. The Division Bench after noticing the law laid down by the Supreme Court on the subject held: -

> "15… A citizen has a right to say or write whatever he likes about the Government or its measures, by way of criticism or comments, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder…"
>
> 16...But for that reason, the freedom of speech and expression available to the third respondent to express his indignation against corruption in the political system in strong terms or visual representations could not

7 (2003) 8 SCC 461

8 Criminal PIL No. 3 of 2015 decided on 17 March 2015

> be encroached upon when there is no allegation of incitement to violence or the tendency or the intention to create public disorder."

Now for words written or spoken to fall within the meaning of sedition, the words would have to be held to have the effect of subverting the Government by violent means or tend to bring about public disorder or the use of violence or incitement to violence. The words or action in order to fall within the meaning of sedition, it was held by the Constitution Bench, would have to travel or stand raised to a degree of revolution against the Government in order to fall within the mischief of the penal provision. At the same time, the Supreme Court held that words however, strongly worded or words which used strong terms with respect to the measures or acts of the Government, strong speech, strong criticism would clearly be outside the scope of the section. It was held that a citizen had a right to say or write whatever he likes about the Government or its measures by way of criticism or comments so long as he did not incite people to resort to violence against the Government established by law or with the intention of creating public disorder. In fact, it was upon these considerations that their Lordships held that if the words or actions in question had not intended to or had not been employed to create disturbance of law and order and yet been restricted from being aired or voiced then such an interpretation would render the provisions of Section 124 A unconstitutional in view of Article 19.

From the above exposition of the law by the Constitution Bench, it is clear that the section aims at rendering penal only such activity which is intended to or which would have a tendency to create disorder or disturbance of public peace. In order for the words written or spoken to fall within the ambit of section 124A, they would necessarily have to

be of a category which would qualify as having a 'pernicious tendency' of creating public disorder or disturbance of law and order. Only then would the law step in to prevent such activity.

The contents of the article written by the applicant can by no stretch of imagination be said to be intended to create public disorder or be designed or aimed at exciting the public against a Government established by law or an organ of the State. The article merely seeks to voice the opinion and the view of the author of the need to strike a balance between the functioning of two important pillars of the country. It is surely not a call to arms.

For the aforesaid reasons, this Court is of the firm opinion that none of the ingredients essential for invoking the provisions of Sections 124A or 505 of the Penal Code stood attracted to the article in question. The Magistrate has committed a manifest illegality in forming an opinion that an offence under the above provisions stood prima facie committed.

E. THE FREEDOM OF SPEECH

The freedom of speech and expression guaranteed by our Constitution to all citizens requires us to tolerate even unpopular views. The free flow of ideas and opinions is an essential concomitant for the intellectual growth of the citizenry. Plurality of views and opinions is an essential facet of a democracy and of great societal importance. It is this underlying theme that envelopes the concept of the '*market place of ideas*'. In **Shreya Singhal Vs. Union of India**[9] the Supreme Court quoted with approval the views expressed by Brandies J. in **Whitney v.**

9 (2015) 5 SCC 1

California [274 US 357] who explained the contents of the right to free speech in the following words: -

> *"…. Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears….."*

In Shreya Singhal (supra) the Supreme Court after noticing the body of precedents rendered by different Courts of the world held:-

> *"13. This leads us to a discussion of what is the content of the expression "freedom of speech and expression". There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a)."*

The article in question therefore was liable to be tested on the above principles. The Court notes that the order of the Magistrate does not record that the contents penned by the applicant would tend to incite the people to insurrection or rebellion. Disrespect, even if it were assumed that the article did so, does not render the action liable to prosecution for offenses under section 124A or section 505. The right to air an opinion, to dissent, intellectual discourse are the heart and soul of the freedom of speech and expression which stands conferred upon all citizens by our Constitution.

The Magistrate appears to have closed his eyes to the well-settled view that healthy criticism or even intellectual disagreement with a particular view of a judge contained in a judgment of the court is not a crime. The view expressed may be unacceptable or even unpalatable to some. However the same does not render it liable to prosecution under the Penal Code. The Magistrate would have done well to remember the

words of the venerable Justice Krishna Ayer in **Baradakant Mishra v. Registrar of Orissa High Court**[10] who observed: -

> " 409…..Vicious criticism of personal and administrative acts of Judges may indirectly mar their image and weaken the confidence of the public in the judiciary, but the countervailing good, not merely of free speech but also of greater faith generated by exposure to the actinic light of bona fide, even if marginally overzealous, criticism cannot be overlooked. Justice is no cloistered virtue."

It was in the above light that the Supreme Court in **P.N. Duda v. P. Shiv Shankar**[11] quoted with approval the following extract from the judgment of Lord Atkin in **Ambard v. Attorney General of Trinidad and Tobago [(1936) 1 All ER 704]** "Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men".

F. THE CAUTION

One last aspect of the matter which must necessarily be adverted to in the opinion of the Court is this. The initiation of criminal prosecution has serious consequences. It relates to the life and liberty of a citizen and carries with it grave consequences. Viewed in that light it is obvious that the exercise of power by the Magistrate must be preceded by due application of mind and circumspection. A note of caution in this regard was sounded by our Supreme Court as far back as in **Punjab National Bank v. Surendra Prasad Sinha**[12]. This judicial interpose was reiterated in **Pepsi Foods Ltd. v. Special Judicial**

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10 (1974) 1 SCC 374
11 (1988) 3 SCC 177
12 1993 (Supp) 1 SCC 499

Magistrate[13] and more recently in **P.S. Meherhomji v. K.T. Vijaykumar**[14].

However in the facts of the present case this Court finds that the assumption of jurisdiction and the issuance of process failed to adhere to the principles laid down in the judgments aforementioned. The Magistrate failed to bear in mind the impact of the prohibition under section 196 of the Criminal Procedure Code. Compliance with its provisions was a prerequisite for taking cognizance. The contents of the article in question was liable to be scrutinized on the touchstone of whether it contained statements which met the basic ingredients required to qualify as an act of 'sedition' or an act intended to induce persons to commit an offense against the State. Was the article a call to arms, rebellion, insurrection? The answer must obviously be in the negative. The Magistrate in the opinion of the Court clearly failed to apply judicial mind, acted irresponsibly and failed to bear in mind the caution and circumspection which should have preceded his assuming jurisdiction and issuing summons.

G. OPERATIVE DIRECTIONS

For the aforesaid reasons, the instant application shall stand allowed. Consequently all proceedings relating to Complaint Case No. 382 of 2015 State v. Arun Jaitley u/s 124A, 505 IPC P.S. Kulpahar District Mahoba pending in the court of the Judicial Magistrate Kulpahar Mahoba U.P. as well as the order issuing summons dated 19 October 2015 shall stand quashed and set aside.

Order Date :- 5.11.2015
LA/-

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13 (1998) 5 SCC 749
14 (2015) 1 SCC 749