



CASE COMMENT: JAVED AHMAD HAJAM V THE STATE OF MAHARASHTRA: DEMARCATION BETWEEN FREEDOM OF SPEECH AND ILLUSORY PERCEPTION

Aditya Bhan Kanojia*

INTRODUCTION

Intention is the manifestation of the highest form of Mens Rea under law, which includes a person acting deliberately with foresight of the repercussions, and is an essential ingredient of the offence under Section 153-A of the Indian Penal Code, 1860. This case comment is an example of the seminal decision *Javed Ahmad Hajam v The State of Maharashtra*¹, a landmark judgment suggesting the scope of Article 19(1)(a)² and Section 153-A³ by virtue of determining the intention of the defendant. On the balancing scale of justice, where at one end is Mr Javed Ahmad Hajam, who advocates for his right to freedom of speech, the other side feels that enmity has been propagated under the aegis of Article 19 (1)(a).

The very case had been plucked for analysis as it deals with the core clause of the right to freedom of speech of an individual, who owns his right to criticise or to be a well-wisher for any entity while being under reasonable restrictions. It also throws light upon what is not included within the demarcations of Section 153-A of the Indian Penal Code and whether feelings of enmity and hatred can be fueled with mere criticism or bidding wishes.

The purpose of this case comment is to critically analyse how Section 153-A has been overridden by the fundamental right enshrined in the Constitution of India. It seeks to examine how the Hon'ble Court has interpreted the terms 'enmity' and 'hatred' under Section 153-A IPC, and whether such interpretation produces a chilling effect on free speech as guaranteed under Article 19(1)(a) of the Constitution.

*BA LLB (HONS.), FIRST YEAR, DR. RAM MANOHAR LOHIYA, NATIONAL LAW UNIVERSITY, LUCKNOW.

¹ *Javed Ahmad Hajam v State of Maharashtra* (2024) 3 SCR 317

² Constitution of India 1950, art 19(1)(a).

³ Indian Penal Code 1860, s 153-A.

BACKGROUND

Indian courts, for a long time, have been occupied with the tension between the state's interest in preserving harmony and obliterating enmity between several groups, and an individual's constitutionally guaranteed right to free expression under Article 19(1)(a). Freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation.⁴ Nonetheless, Section 153-A of the Indian Penal Code, 1860, which penalises acts promoting enmity between groups on grounds of religion, race, or place of birth, has frequently been invoked to act as a mediator between this conflict.

It is with respect to the above statutes that the Supreme Court of India has been called on upon to adjudicate the case of Javed Ahmad Hajam v. State of Maharashtra, wherein an impugned FIR has been registered against the appellant, accusing him of committing the crime mentioned in Section 153-A of the Indian Penal Code.

The appellant resided at Baramulla in his early days, after which he got shifted to Kolhapur, Maharashtra and became a Professor at Sanjay Ghodawat College. In his tenure, he was a member of the WhatsApp group, which consisted of parents and teachers. The spark that fueled the members of the group was two messages posted by the appellant, calling 5th August the Black Day for Jammu and Kashmir, and wishing Independence Day to Pakistan on the 14th of the month. This was led by a status that showed his dissent to the abrogation of Article 370 of the Constitution. Perceiving these statuses as inciting, the group lodged an FIR under Section 153-A of the Indian Penal Code, 1860, at the Hatkanangale Police Station in Kolhapur.

ISSUES

The core issues revolving around are as follows:

1. Whether the WhatsApp statuses attracted Section 153-A of the Indian Penal Code.
2. Whether the expression of the Appellant constituted protected speech under Article 19(1)(a).
3. Whether the requisite mens rea to establish Section 153-A was established.

⁴ *Romesh Thappar v State of Madras* AIR 1950 SC 124, 1950 SCR 594

ARGUMENTS

The counsel appearing for the appellant advocated by quoting *Manzar Sayeed Khan v. State of Maharashtra & Anr*⁵, which declares that the intention to cause disorder or incite the people to violence is the *sine qua non* of the offence under Section 153-A IPC and the prosecution has to prove *prima facie* the existence of *mens rea* on the part of the accused⁶. The respondent state contended that the effect of the appellant's WhatsApp status can only be determined after the examination of the witnesses. They added that no *prima facie* conclusion should be drawn, while underestimating the magnitude of disharmony that could be propagated by the statuses. As under Section 153-A, it is to be proved that the words 'promoted' have to be showcased, and it needs a span of time to see the repercussions of the very status; therefore, quashing the FIR in the initial stage should be avoided. It also appeals to include the perspective of the witness who will testify if they felt instigated after the accused posted the status.

JUDGMENT

The democracy encompasses both dissent and consent, and the judiciary has, in the judgment, drawn a line between what is criminal and critical. The court held that clause (a) and clause (b) of Section 153-A were not attracted to the posts of the appellant. To lay down this judgment, the court emphasised intention. It admitted that intention is the *sine qua non* of the offence, and it is imperative for the prosecution to prove that the statuses have been posted with *mens rea*.

For the first status, the court held that it is nothing but a mere criticism of the State's action and is well within the fundamental right of the individual. The Court rightly insisted on a proximate nexus between the speech and the public order harm alleged.

The court found the second status not worthy of being attracted by Section 153-A. It did so by calling it a gesture of goodwill and thus does not promote enmity between any groups.

As per the third status, it was reckoned as the clearest and most straightforward of the three. The court held that the appellant was merely putting forth his criticism regarding the State's decision to abrogate Article 370 of the Constitution.

⁵ *Manzar Sayeed Khan v State of Maharashtra* (2007) 5 SCC 1

⁶ *Manzar Sayeed Khan v State of Maharashtra* (2007) 5 SCC 1 [16]

The court further applied the reasonable man test drawn from *Ramesh v Union of India* as a shield against weaponisation of S.153-A. The court dismissed any appeal relating to clause (b) of Section 153-A by confirming that they do not tend to promote disharmony among communities.

OBSERVATIONS OF THE COURT

The court initially held that if every criticism is interpreted as a threat to society under Section 153-A, democracy's foundational roots will be pulverised. It further elevated the right to dissent as an imperative part of the right to freedom of speech and expression, directly reading it with the right to live a dignified and meaningful life under Article 21 of the Indian Constitution, giving it double weightage.

Lastly, the court ordered the police to be educated about the concept of freedom of speech and expression.

The Hon'ble court, in their order, set aside the Bombay High Court's judgement dated 10th April, 2023 and quashed the FIR bearing 295 of 2022 and declared that the appeal is hereby allowed.

OBSERVATIONS BEYOND THE RATIO

One of the observations of the court was, albeit obiter, that if every criticism or protest of the actions of the State is to be held as an offence under Section 153-A, democracy, which is an essential feature of the Constitution of India, will not survive.⁷ This invoked democracy as the foundation of the judgment, which was first established in *Kesavananda Bharati v State of Kerala*⁸.

ANALYSIS

The Supreme Court, in consideration of a feasible source and with due diligence, has reached an accurate conclusion. It did so through the narrowest possible, declining every opportunity to lay down a strict measure so as to prevent the systematic abuse of the statute. A judgment

⁷ *Javed Ahmad Hajam v State of Maharashtra* (2024) 3 SCR 317 [10]

⁸ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225

that quashes an FIR while not regulating the very premise that produced it offers relief to an individual but not to society.

Further, the court held that the time has come to enlighten and educate our police machinery on the concept of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution and the extent of reasonable restraint on their free speech and expression⁹.

The court, in its findings, plucked out a problem, which was a routine weaponisation of Section 153-A against dissent. No binding guidelines were issued. This stands in contrast to the Court's approach in the case of *Arnesh Kumar v. State of Bihar*, where the judges, when confronted with a similar situation which included the misuse of Section 498-A, issued the following guideline:

- Made compulsory pre-arrest guidelines which will be binding on the police officers,
- Made reason a mandatory prerequisite before detention.
- Departmental action would be taken against any officer not abiding by the very decision.

In contrast to that, the court in the present situation failed to take any significant and bold moves.

Moreover, the court treated the posts of the appellant as a public speech or as evidence, not being confined to a group. The status of the appellant was visible only to a close net, which did not serve the criterion of Section-153A. The Hon'ble court in the case of *Shreya Singhal v Union of India* has built the foundation regarding speech regulation, where the court held that 'first is discussion, the second is advocacy, and the third is incitement'¹⁰. Mere discussion, propagation of one's beliefs, howsoever being infamous, is within the jurisdiction of Article 19(1)(a). This matter will further be entertained when it reaches to the level of incitement.

The appellant's status was nothing more than discussion and advocacy; it never had any criterion to get the third category ticked. The court proceeded to decide this case mainly through the requirement of mens rea under Section 153-A. The court had, in its powers, the best chance to lay a strict guideline to prevent the misuse of Section 153-A

⁹ *Javed Ahmad Hajam v State of Maharashtra* (2024) 3 SCR 317 [13]

¹⁰ *Shreya Singhal v Union of India* (2015) 5 SCC 1 [13]

THE COURT'S TREATMENT OF ARTICLE 370 IS CONSPICUOUSLY SUPERFICIAL

The court correctly held that any mere criticism related to Article 370 is protected speech- but failed to address the political climate regarding it.

The appellant, as aforementioned, is one of the minorities of Kashmir and any act done or statute misused to coerce him to lower his voice leads to the snatching of the fundamental rights from the minorities.

A truly complete judgment would have acknowledged this vacuum and addressed it explicitly. In *S.G. Vombatkere v Union of India*¹¹, a three-judge bench was confronted with an analogous pattern of executive misuse of a speech-restricting penal provision. The court took bold steps by directing the State and Central Government to halt the registration of any FIR under Section 124-A, while the law is under consideration and further amendments will be made, given the atmosphere. The court in the case of Javed Ahmad Hajam, confronting an identical pathology, did not follow the strictness of the aforementioned case.

CONCLUSION

The case of Javed Ahmad Hajam is a case that targets the illusory perception of promoting enmity by a status, which itself is not public but is exposed to a limited group. The Supreme Court decision is accurate, and reading Article 21¹² of the Indian Constitution was of utmost significance, so as to put more weightage. Yet the judgment confined itself to an individual's relief, issued unenforceable and mild directions to the police and studied silence on the disproportionate invocation of Section 153-A to suppress the voices of the minorities. In a democracy, where the process itself is labeled as torture, relief of the multitude was most imperative. The right to dissent requires not just a judgment but also a reformation. The case represented a constitutional opportunity for a greater magnitude. Of late, Section 153-A has metastasized into an instrument to suppress the voices against any valid political dissent. The court was well within its jurisdiction to extirpate the misuse, to transform this case into a mandatory safeguard for any individual who puts forth their grievance. It chose to provide justice to a voice, leaving the fractured architecture intact.

¹¹ *S G Vombatkere v Union of India* (2022) SCC OnLine SC 633 [5]

¹² Constitution of India 1950, art 21