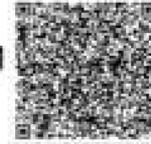


IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2026:PHHC:027901



CRM-M-62284 of 2024(O&M)

Reserved on: 11.02.2026

Pronounced on:23.02.2026

Uploaded on:24.02.2026

Dheeraj Gupta

..Petitioner

Versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MS. JUSTICE SHALINI SINGH NAGPAL

Present: Mr. Aditya Sandhi, Advocate and
Mr. Lokesh Sharma, Advocate for the petitioner.

Mr. Kshitij Bharti, Assistant Advocate General, Haryana.

Mr. Vishal Garg Narwana, Advocate and
Ms. Nancy Antwal, Advocate for respondent No.2.

SHALINI SINGH NAGPAL, JUDGE

1. Prayer in the petition under Section 528 of the Bharatiya
Nagarik Suraksha Sanhita, 2023 is for quashing FIR No. 119 dated
14.02.2024, under Sections 120-B/294/354-A/509 of IPC Police Station
Sector 10, Gurugram, District Gurugram, Haryana and all subsequent
proceedings arising therefrom.

2. A written complaint to SHO, Police Station 10-A, Gurugram, was addressed by complainant stating that she was resident of [REDACTED] [REDACTED], Gurugram and was working as [REDACTED] [REDACTED] at [REDACTED], Gurugram. Some residents in the housing society were operating a WhatsApp group in the name of Cultural WhatsApp Group and Deeraj Gupta along with several ladies and gentlemen from the society was member of the group. The day before, a member of the housing society Sh. K.P. Singhania, posted her profile with photo on his WhatsApp group. Accused Dheeraj Gupta with the intent to embarrass, humiliate, defame, insult her modesty and to annoy her passed a lewd comment, sexually coloured remark on her photo in the following terms '*Jaane kitne dinon ke baad society me abb chand nikla*'. He intentionally made the remark on a public platform, colluding with others who supported him and his message by posting messages in the WhatsApp Group. This was done to embarrass, sexually harass, annoy, humiliate, defame her in the society and insult her modesty. Due to the lewd sexually coloured remark of the accused in the group on a public platform, she felt embarrassed, sexually harassed, humiliated, insulted and annoyed and it adversely affected her image in the general public. She did not promptly report the matter to the police as some members of the society asked her to compromise with the accused but she did not wish to compromise her self respect and could not bear the insult. She requested that necessary action be taken against accused Dheeraj Kumar and his accomplices, they be booked and sentenced for committing offences punishable under Sections 294/509/354-A IV and 120-B IPC.

3. Learned counsel for the petitioner submits that the allegations levelled in the FIR were fabricated, stemming out of personal vendetta and the remark made by the petitioner did not constitute any offence. Referring to the WhatsApp Chat at Page No. 37 to 40 of the paper book, he submitted that intent of the message posted by the petitioner and the reply by other members of the group, was never to insult the complainant. Rather, the text message was addressed to another member, not to the complainant. After the message was sent, other members of the group also responded to the message humorously. Intention (*mens-rea*) to commit the offence under Sections 294, 354-A and 509 IPC was totally missing. It was argued that the only evidence collected by the prosecution was a single remark made by the petitioner humorously which did not amount to an offence. Allegations in the FIR, even if accepted at face value, did not constitute necessary ingredients of offence for which petitioner was booked. Neither the words were obscene nor were intended to cause annoyance in a public place. The WhatsApp group was a private platform accessible only to selected members and did not qualify as a 'public place'. There was no deliberate intent to sexually harass and insult the modesty of a woman. The comment made by the petitioner was an idiomatic expression commonly used in social interaction and could not be construed as a sexually coloured remark or an act of harassment. Police Investigation did not find any evidence to support the allegations of criminal conspiracy. The registration of FIR and subsequent proceedings against the petitioner were clearly abuse of the legal process, motivated by personal vendetta and *mala-fide* intent to tarnish petitioner's reputation.

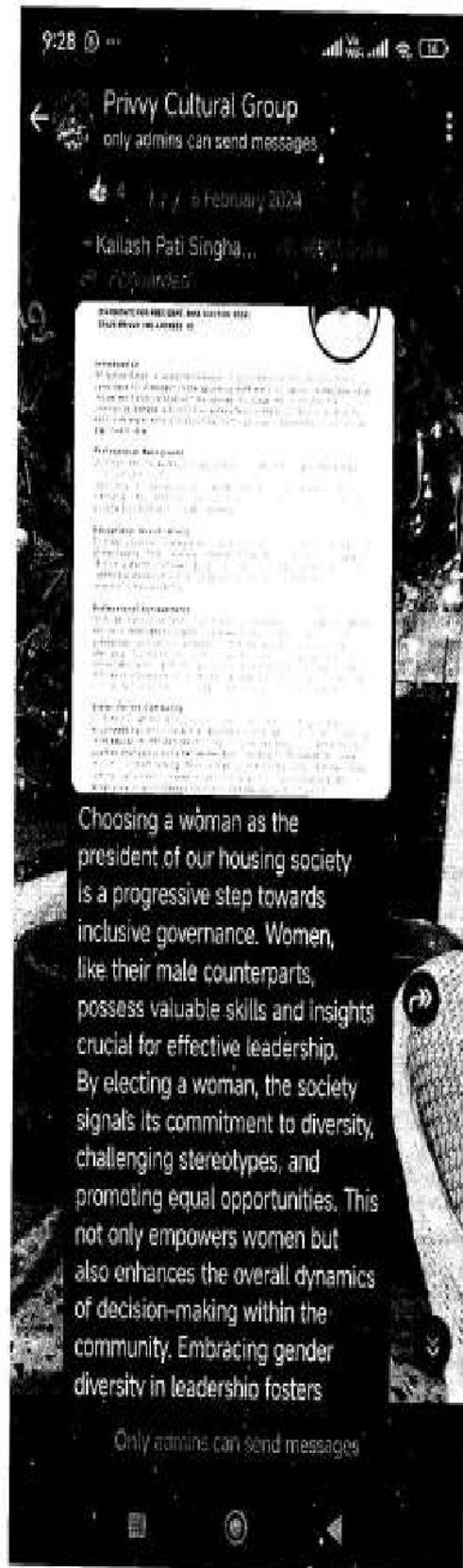
4. It was further argued that in her statement under Section 164 Cr.P.C. the complainant went a step further to involve all other members of the society and her statement would make it clear that the FIR was lodged as complainant was fearful of a counter FIR being lodged against her with regard to suicide committed by petitioner's wife on 12.02.2024. The offences invoked against the petitioner carried significant legal repercussions and it was a fit case to invoke inherent power of this Court under Section 528 of BNSS to prevent prosecution of the petitioner and consequent miscarriage of justice.

5. Learned State counsel has filed reply by way affidavit and submits that after registration of the FIR, complainant was joined in investigation, she presented photocopies of the chats in the group Privvy Cultural Group and certificate under Section 65-B Evidence Act. Her statement was also recorded under Section 164 Cr.P.C. Four pages of the chats were taken into police possession. No evidence was found against other named persons and Section 120-B IPC was deleted. Petitioner was also joined in investigation. His mobile phone was taken into police possession and sent to DITAC Lab. Trial was now pending before learned Judicial Magistrate Ist Class, Gurugram. The comment posted by the petitioner was derogatory for any woman and amounted to obscenity.

6. Respondent No.2 has also filed short reply contesting the petition. Her counsel submits that respondent No.2 was serving as a Principal in a Government school and was a highly respected person. She decided to contest the election for the post of President for Resident Welfare

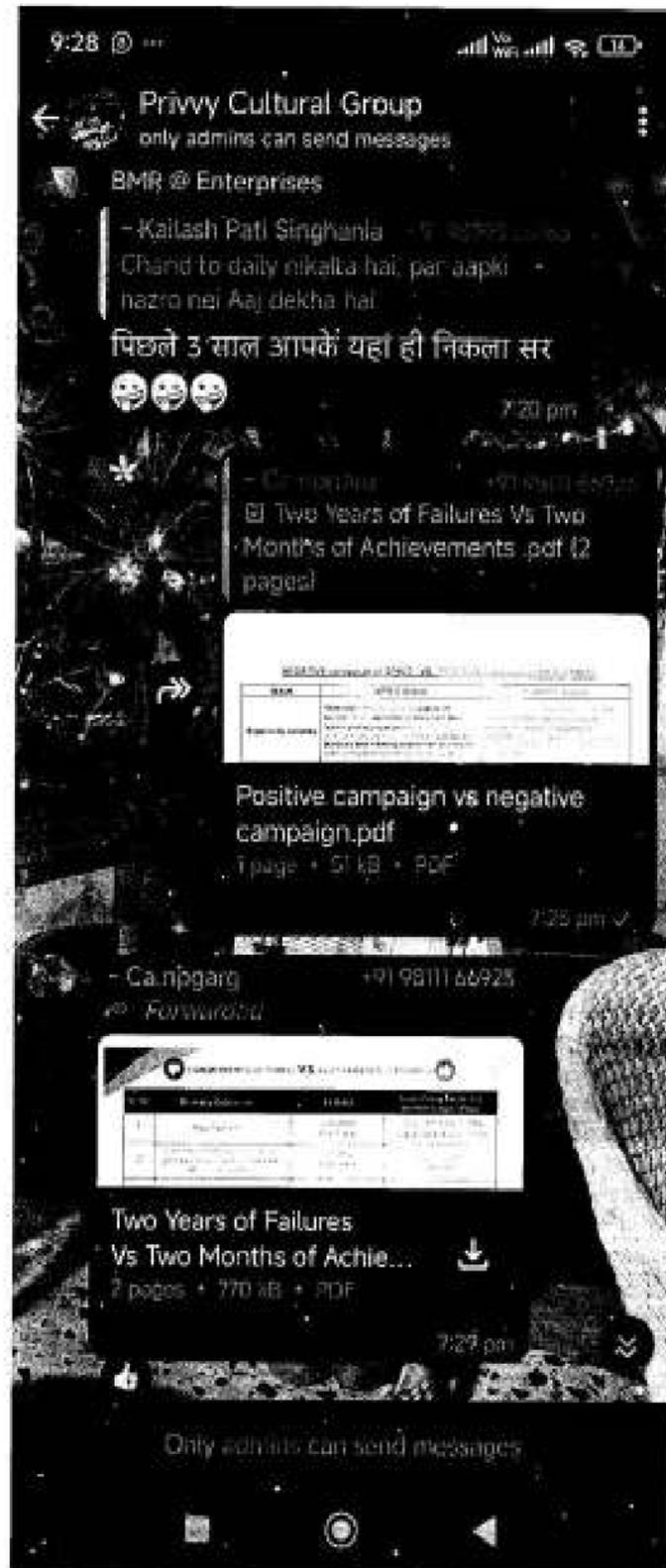
Association of the Society. There was a deep rooted conspiracy hatched by the petitioner and its associates to pressurise her to withdraw from the election. The comment posted by the petitioner was obscene, indecent, derogatory and was followed by inappropriate emojis. Petitioner was asked by other members of the group not to use the language, yet, inappropriate messages continued and the group admin had to block the group. The incident deeply impacted respondent No.2 who fell insulted, humiliated to an extent that she could not attend the morning assembly in her school for 4-5 days. Statement of respondent No.2 was also recorded under Section 164 Cr.P.C. wherein she detailed entire facts and subsequent events. Petitioner had committed serious offences and it was not a fit case to quash at the inception. Allegations in the FIR necessitated a full fledged trial.

7. Petitioner and respondent No.2 are residents of a Housing Society in Gurugram. Election of the Residents Welfare Association of the Society was proposed to be held on 11.02.2024. Respondent No.2 decided to contest the election for the post of President. Some members of the society had constituted a WhatsApp group wherein events of common interest were discussed. The controversy arose on account of posting of a message by the petitioner in the WhatsApp group called Privvy Cultural Group. The text messages taken into possession by the police are at Page Nos. 37 to 40. The relevant messages are reproduced hereinbelow for ready reference:









8. Section 120-B IPC has been deleted by the police during the course of investigation and only the petitioner has been sent up for trial. Section 294, 509, 354-A IPC have been invoked against him by the police.

9. Section 294 IPC reads thus:

‘294. Obscene acts and songs.—

Whoever, to the annoyance of others,

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.’

10. The test of obscenity under Section 294(b) was considered by Hon’ble Supreme Court in *N.S. Madhanagopal and another Versus K. Lalitha, (2002) 17 SCC 818* and it was observed as under:

‘It is to be noted that the test of obscenity under Section 294(b) of the I.P.C. is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. The following passage from the judgment authored by Justice K.K. Mathew (as his Lordship then was) reported in P.T. Chacko v. Nainan (1967 KLT 799) explains as follows:

“The only point argued was that the 1st accused has not committed an offence punishable under Section 294(b) IPC., by uttering the words above-mentioned. The courts below have held that the words uttered were obscene and the utterance caused annoyance to the public. I am not inclined to take this view. In the Queen v. Hicklin, [L.R.] 3 Q.B. 360 at 371 Cockburn C.J. Laid down the test of ‘obscenity’ in these words:

“..... the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences”

*This test has been uniformly followed in India. The Supreme Court has accepted the correctness of the test in **Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881. In Samuel Roth v. U.S.A., 354 US 476 (1957), Chief Justice Warren said that the test of 'obscenity' is the "substantial tendency to corrupt by arousing lustful desires". Mr. Justice Harlan observed that in order to be 'obscene' the matter must "tend to sexually impure thoughts". I do not think that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, but I do not think that the words are 'obscene' and the utterance would constitute an offence punishable under S. 294(b) IPC".***

11. Hon'ble Supreme Court further held that mere abusive, humiliating or defamatory words by themselves, cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294(b) IPC, mere utterance of obscene words is not sufficient, there must be further proof to establish that it was to the annoyance of others.

12. The message posted in the WhatsApp group was not a personal message from the petitioner. More than two persons were members of the group. Though WhatsApp messages sent by one person to another are end to end encrypted and can be read only by the sender and recipient of the message, when a message is sent in a group, where it can be accessed and read by all the members of the group, such messages cannot be termed private or personal and posting messages in the WhatsApp group would amount to making an "utterance in a public place" within the meaning of Section 294 IPC.

13. Be that as it may, what is required to be considered is -

'whether the text message posted by the petitioner was 'obscene'.

14. Every humiliating word, by itself cannot, be said to be obscene. While defining obscenity, the court has to be sensitive to the perspective of the modern day society and its changing views on obscenity.

15. The objectionable message posted by petitioner is reproduced hereunder at the cost of reproduction:

'Jaane kitne dinon ke baad society me abb chand nikla 🤔 🤔'

16. The message was in response to the profile of the complainant/respondent No.2 shared by one Sh. K.P. Singhania another member of the group. After the petitioner posted the objectionable message in the group Sh. K.P. Singhania responded by saying:

'Chand to daily nikalta hai, par aapki nazro nei Aaj dekha hai'

Thereupon petitioner again posted the following comment:

'pichle 3 saal apke yaha hi nikla sir ...'

17. The words above and the emojis used by the petitioner are certainly not in good taste and may have the tendency of offending a lady. The fact remains that to constitute an offence Section 294(b), obscenity is a *sine-qua-non*. As held in the case of *N.S. Madhanagopal's case (supra)* mere use of abusive, humiliating or defamatory words by itself cannot attract the offence under Section 294 (b) IPC.

18. In other words in order to attract the culpability of Section 294 IPC, the words used must be capable of arousing sexually impure thoughts in the mind of the person who heard the word or saw them, thus causing annoyance. The message posted by the petitioner does not fall in that category. Though the words used are not in good taste and appear to have been used mockingly, they do not satisfy the definition of obscenity within the four corners of Section 294 IPC.

19. The first message, copied from a popular Bollywood song is not capable of arousing sexual impure thoughts. The second comment reflects that intention of the petitioner was more humorous rather than to insult the complainant. The text messages do not contain lascivious or sexual content. The comments, though inappropriate, do not meet the legal definition of obscenity. As such, even though the WhatsApp group where the messages were posted would be a public place, no offence under Section 294 IPC would be made out.

20. Petitioner has also been booked under Section 354-A IPC, which is reproduced below:

Section 354-A IPC is reproduced hereinbelow:

‘354A. Sexual harassment and punishment for sexual harassment.—

(1) A man committing any of the following acts—

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or 1. Subs. by Act 13 of 2013, s. 6, for “shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both” (w.e.f. 3-2-2013). 2. Ins. by s. 7, ibid., (w.e.f. 3-2-2013). 84

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.’

21. As discussed above, the message posted by the petitioner having no sexual undertones cannot be termed a sexually coloured remark, therefore, the offence under Section 354-A IPC is also not made out. Moreso, when the complainant was not even apart of the WhatsApp group. The remark made in the group cannot be said to be targeted at the complainant, to amount to sexual harassment.

22. Coming to Section 509 IPC , the same reads as under:

509. Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, 2 [shall be punished with simple imprisonment for a term which may extend to three years, and also with fine].

23. In ***Madhushree Datta Versus State of Karnataka and another (2025) 3 SCC 612***, Hon'ble Supreme Court held as under:

'For ascertaining whether, prima facie, the provision of Section 509 of the IPC was attracted, it is essential to first understand the meaning of the term "modesty", to determine whether modesty has been insulted. While modesty is not explicitly defined in the IPC, this Court has addressed the essence of a woman's modesty in the decision in Ramkripal v. State of Madhya Pradesh. 14 Excerpts from the decision read as under:

"12. What constitutes an outrage to female modesty is nowhere defined in IPC. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex..."

28. Further, this Court while discussing the test for outraging the modesty of a woman under Section 509IPC in *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [*Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, (1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , observed as under : (SCC p. 206, para 15)

“15. In *State of Punjab v. Major Singh* [*State of Punjab v. Major Singh*, 1966 SCC OnLine SC 51 : AIR 1967 SC 63] a question arose whether a female child of seven-and-a-half months could be said to be possessed of “modesty” which could be outraged. In answering the above question Mudholkar, J., who along with Bachawat, J. spoke for the majority, held that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354IPC. Needless to say, the “common notions of mankind” referred to by the learned Judge have to be gauged by contemporary societal standards. The other learned Judge (Bachawat, J.) observed that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the above dictionary meaning of “modesty” and the interpretation given to that word by this Court in *Major Singh case* [*State of Punjab v. Major Singh*, 1966 SCC OnLine SC 51 : AIR 1967 SC 63] it appears to us that *the ultimate test for ascertaining whether modesty has been outraged, is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman.*”

24. To attract Section 509 IPC, the words used should be such as would insult the modesty of the complainant. The criminal intention of the petitioner to insult the modesty of the complainant and her sense of decency, being a woman is clearly missing. Mere mocking words and emojis posted by the petitioner on profile of complainant, without any nexus to her sexual dignity, cannot amount to an offence under Section 509 IPC.

25. Further, section 509 IPC provides that the act alleged must have been intended to be 'seen by such woman or should be one that intrudes upon the privacy of such woman'. The intention to insult the modesty of the complainant by intending that the message would be seen by the complainant is missing as the complainant was never a part of the WhatsApp group, at the time when the message was posted. The word *per se* have no nexus to complainant's sexual dignity or modesty. Thus essential ingredients of offence under Section 509 IPC are also not made out.

26. In *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335*, Hon'ble Supreme Court has formulated the parameters in terms of which the powers under section 482 of CrPC, 1973 could be exercised. The Court held that quashing may be appropriate:

“(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 malafide 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.

27. The present case is squarely covered by category No. (a) and (c) of **Bhajan Lal's case (supra)**. Subjecting the petitioner to the rigmarole of a trial which may take years to conclude, would only increase the burden of the Courts and would not lead to any fruitful result. Criminal prosecution of petitioner, on insufficient grounds at the whim of the complainant, cannot be allowed to continue.

28. The petition is allowed.

29. Accordingly, FIR No. 119 dated 14.02.2024, under Sections 120-B/294/354-A/509 of IPC Police Station Sector 10, Gurugram, District Gurugram, Haryana and all consequential proceedings arising therefrom is ordered to be quashed qua the petitioner.

All the pending miscellaneous applications, if any, stand disposed of.

(SHALINI SINGH NAGPAL)
JUDGE

23.02.2026

reema Whether speaking/reasoned : Yes
Whether reportable : Yes