TC - 01

ABC MOOT COURT COMPETITION, 2022

Before

THE HONOURABLE SUPREME COURT OF INDIA

AT DELHI

CRIMINAL APPELLATE JURISDICTION

{under Article 134 of the Constitution of India, 1950}

IN THE CASE OF

[redacted] _____*Appellant*

v.

Union of India _____*Respondent*

[CRIMINAL APPEAL NO. _____ OF 2022]

MEMORIAL ON BEHALF OF RESPONDENT

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LIST OF ABBREVIATIONS

&	*And*
§	*Section*
¶	*Paragraph*
AIR	*All India Reporter*
Anr.	*Another*
Art.	*Article*
Cr LJ	*Criminal Law Journal*
Cr.P.C.	*Code of Civil Procedure*
d/o	*Daughter of*
ed.	*Edition*
F.I.R.	*First Information Report*
Govt.	*Government*
Hon'ble	*Honourable*
I.P.C.	*Indian Penal Code*
Id.	*Idem*
MANU	*Manupatra*
No.	*Number*
Ors.	*Others*
p.	*Page*
PIL	*Public Interest Litigation*

s/o	*Son of*
SC	*Supreme Court*
SCC	*Supreme Court Cases*
Sec.	*Section*
u/s	*Under Section*
v.	*Versus*

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STATEMENT OF JURISDICTION

In response to the petitioner's submissions under ***Article 134(1)***[1] of the Constitution of India read with ***Section 2***[2] of the Supreme Court (Enlargement of Criminal Appellant Jurisdiction) Act, 1970 the Respondents most humbly respond to the same. The respondent humbly contends that the present criminal appeal is not maintainable before the Hon'ble Court.

[1] ***Article 134: Appellate jurisdiction of Supreme Court in regard to criminal matters.***_ (1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court: (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or (c) certifies under Article 134A that the case is a fit one for appeal to the Supreme Court: Provided that an appeal under sub clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of Article 145 and to such conditions as the High Court may establish or require

[2] ***Section 2: Enlarged appellate jurisdiction of Supreme Court in regard to criminal matters.***_ Without prejudice to the powers conferred on the Supreme Court by clause
(1) of Article 134 of the Constitution, an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—
(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or to imprisonment for a period of net less than ten years;
(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years.

STATEMENT OF FACTS

BACKGROUND

WE HEREBY SHEWITH:

1. That Mr. Rohan Chawla, the Appellant, is a prominent free speech advocate residing in Delhi.
2. That the Appellant has been involved in numerous public interest litigations and several other people's movements.
3. That Mr. G.G. Parwani had started a movement against the alleged human right abuses of the incumbent government. The appellant was participating in this movement.

CAUSE OF ACTION

1. That during a prime-time TV debate Mr. Chawla recurringly recited slogans, "*Goyal tu hai bewafa ab toh dede istifaah*".
2. That the next day Mr. G.G. Parwani organised a fast unto death where addressing thousands of people, the appellant, said that:

   "*Mr. Goyal you and your stooges in the Government have destroyed this country. The thousand cuts that you have inflicted on our democracy will not be forgotten. Friends, our is the day to seize and conquer. For, if we remain meek and hidden, this government which has till now obliterated our less privileged will come for you and me. Instead, its time that we get them. Remember what our mentors said, "There are decades when nothing happens; and there are weeks when decades happen." Let this be the week of revolution in the country. Let it be the final hurdle before we reclaim this country's pride and honour.*"
3. That immediately after the commencement of hunger strike an F.I.R. was registered by the jurisdictional Police Station, under Sec. 124A of the Indian Penal Code.
4. That the appellant being a supporter of the movement filed a petition in the Delhi High Court which was rejected on merits.

IT IS THEREFORE:

5. The Appellant has approached the Hon'ble Court under Article 134 of the Indian Constitution to seek relief and to challenge the constitutionality of the offence of Sedition penalised under Sec. 124A of the Indian Penal Code, 1860.

ISSUES RAISED

I.

1. **WHETHER THE CRIMINAL APPEAL MAINTAINABLE BEFORE THE HON'BLE COURT?**

II.

2. **WHETHER SECTION 124A OF THE INDIAN PENAL CODE UNCONSTITUTIONAL?**

III.

3. **WHETHER THE APPELLANT IS LIABLE TO BE ATTRIBUTED WITH CRIMINAL LIABILITY UNDER SECTION 124A OF THE INDIAN PENAL CODE?**

SUMMARY OF ARGUMENTS

[1.] THAT THE CRIMINAL APPEAL IS NOT MAINTAINABLE BEFORE THE HON'BLE COURT

It is most humbly submitted that the Hon'ble High Court of Delhi was justified in not issuing the certificate of appeal to the appellant as neither of the pre-requisites enshrined under Art. 134A of the Constitution for issuing the certificate of appeal was duly sufficed. The petition filed by the appellant under Sec. 482 of Cr.P.C. was not maintainable before the Hon'ble High Court as neither of pre-requisites formulated by the Apex Court on quashing of F.I.R. were satisfied. Furthermore, no question of law arises in the instant case as Sec. 124A is a reasonable restriction on the Right to Freedom of Speech and Expression under Art. 19(2) of the Constitution. It is therefore humbly contended that the Hon'ble Court may not entertain the instant writ petitions.

[2.] THAT SECTION 124A OF THE INDIAN PENAL CODE IS NOT UNCONSTITUTIONAL

It is most humbly submitted that according to Art. 13(2) any law or any of its provision thereto which is inconsistent with the fundamental rights enshrined under Part III of the Indian Constitution is void to the extent of its inconsistency. Sec. 124A is a "*reasonable restriction*" on the Right to Freedom of Speech and Expression under Art. 19(2) which is also supported by the Law Commission's observations in its Forty-Second Report and the Supreme Court's judgement in the case of *Kedar Nath v. Union of India*. It is therefore humbly contended that Section 124A of the Indian Penal is not unconstitutional.

[3.] THAT THE ACCUSED IS LIABLE TO BE ATTRIBUTED WITH CRIMINAL LIABILITY UNDER SECTION 124A OF THE INDIAN PENAL CODE

It is most humbly submitted that the appellant's speech made to thousands of people during the hunger strike organised by Mr. G.G. Parwani was intended to outrage a feeling of hostility against the incumbent government and was not merely a "*disapprobation*" of its policies or measures. The appellant's speech was thus seditious in nature that forms sufficient grounds to make accused liable to be attributed with criminal liability under Sec. 124A of the I.P.C. Furthermore, since all the essentials of Sec. 124A were *prima facie* sufficed in the instant case there stand no legal ground to quash the F.I.R. against the appellant.

ARGUMENTS ADVANCED

[1.] THAT THE CRIMINAL APPEAL IS NOT MAINTAINABLE BEFORE THE HON'BLE COURT

"*The idle and whimsical plaintiff, a dilettante who litigates for lark, is a spectre which haunts the legal literature, not courtroom*[3]." It is most humbly submitted before the Hon'ble Court that: (1) *firstly*, the Hon'ble High Court has not issued the certificate for appeal under Art. 134A of the Indian Constitution **[1.1]**; and (2) *secondly,* no substantial question of law arises in the instant case **[1.2];** *thirdly*, no exceptional circumstances arise in the instant case where substantial and grave injustice has been done **[1.3]**; and *lastly*, there has been no lapse of the part of the High Court in marshalling of evidence which justifies reviewing it in larger interests of justice **[1.4]**. The counsels therefore humbly contend that the writ petition at hand is not maintainable before the Hon'ble Court.

[1.1] THAT THE HON'BLE HIGH COURT HAS NOT ISSUED THE CERTIFICATE FOR APPEAL UNDER ART. 134A OF THE INDIAN CONSTITUTION

It is most humbly submitted that a criminal appeal under Art. 134 is maintainable when either of the following conditions are sufficed namely: (1) the High Court has issued a certificate for appeal under Article 134A[4] or (2) the High Court has not issued the Certificate of Appeal but the High Court-

> "(1) *has on appeal reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or to imprisonment for a period of net less than ten years*; or
>
> (2) *has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years*".[5]

It is further submitted that in the case of ***Nar Singh v. State of U.P.***[6] the Apex Court held that the power to grant fitness certificate for appeal in the criminal cases is a discretionary power, but the discretion is judicial one and must be judicially exercised along with the well-

[3] Professor K.E. Scott, *Standing in the Supreme Court: A functional analysis* 86 (1973).
[4] INDIA CONSTI., art. 134 cl. (1).
[5] The Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, § 2, Act 28 of 1970, Act of Parliament (India)
[6] Nar Singh v. State of U.P., AIR 1954 SC 457.

established lines which govern this matter.[7] The Supreme Court has also elucidated the guidelines for issuing a fitness certificate under Art. 134 wherein it was held that a certificate for appeal must only be issued by the High Court where grave injustice has been done, where a substantial question of law is involved or where there has been a lapse on the part of sub-ordinate courts in marshalling of evidence.[8]

[1.1.1] *That no certificate of appeal has been issued by the High Court*

It is most humbly submitted that the High Court has not issued any certificate of appeal to the appellant under Art. 134A of the Constitution which *ex facie* implicates that the High Court has found no sufficient legal grounds for its decision to be reviewed in appeal as are elucidated further in **[1.2], [1.3]** & **[1.4]**. Thus, the Hon'ble Court may refuse to entertain this appeal.

[1.1.2] *That none of conditions has been sufficed in the instant appeal justifying its maintainability without a Certificate of Appeal*

It is further submitted that a criminal appeal is maintainable without a Certificate of Appeal only in two circumstances as are already elucidated before.[9] *Ispo facto* neither of the situations arise in the instant case. This *per se* ousts the appeal from the jurisdiction of the Hon'ble Apex Court. Thus, the Hon'ble Court may refuse to entertain this appeal.

[1.2] THAT NO SUBSTANTIAL QUESTION OF LAW ARISES IN THE INSTANT CASE

It is humbly submitted that the instant case is concerned merely with disputed questions of facts and not questions of law as Sec. 124A of I.P.C. is one of the "*reasonable restrictions*" on the Right to Freedom of Speech and Expression under Art. 19(2) which makes it only amenable to the jurisdiction of the respective trial court as is elucidated in **[2]**. Also, there is exists no sufficient legal ground to call for intervention by the High Court in the instant matter as is elucidated further in [**1.4**]. Thus, it is humbly contended that the Hon'ble Court is not justified in exercising its powers in the instant case.

[7] *Id*.
[8] Sidheshwar Ganguly v. State of West Bengal, AIR 1958 SC 143.
[9] ¶ 1, Argument [1.1].

[1.3] THAT NO EXCEPTIONAL CIRCUMSTANCES ARISE IN THE INSTANT CASE WHERE SUBSTANTIAL AND GRAVE INJUSTICE HAS BEEN DONE

It is most humbly submitted that the Hon'ble Court is entitled with the power to intervene where the principles of natural justice are violated[10] but natural justice "*is not an unruly horse, no lurking landmine, nor a judicial cure-all*[11]" and the "*courts cannot look at law in the abstract or natural law as a mere artefact*[12]". One of the principles of natural justice is *audi alteram partem* which means 'no man should be condemned unheard'.[13] This principle ensures '*right to fair trial*' and '*right to access to justice*'. However, the Supreme Court in the case of ***Union of India v. W.N. Chadha***[14] held that the rule of *audi alteram partum* may be jettisoned only "*in very exceptional circumstances where compulsive necessity so demands* and not to "*defeat the ends of justice*". It was further held that the appellant must show that they have suffered from the denial of reasonable opportunity.[15]

It is most humbly submitted that the counsels for the appellant may contend that the principles of natural justice are not being violated since the appellant has not been denied of reasonable opportunity of being heard since they have so many efficacious alternative remedies to seek relief under. The Appellant could have filed an application of '*dismissal of complaint*' before the Hon'ble Court of Sessions under Sec. 203 of Cr.P.C. or could have applied for '*anticipatory bail*' under Sec. 438 of Cr.P.C. to apprehend arrest or could have applied for '*discharge*'[16] & argued for acquittal before the trial court under Sec. 239 of Cr.P.C.

However, it is necessary to show that the remedy available are '*efficacious*'[17]. Efficacy of a remedy depends on the attendant facts and circumstances. Since, the investigation was completed thus the appellant could have approached the trial court for seeking relief from either of these remedies. Dismissal of Complaint provides similar relief as quashing of F.I.R. *A fortiori*¸ these reasons are *ex facie* sufficient to hold that all the aforesaid remedies are *per*

[10] State of U.P. v. Sudhir Kumar Singh & Ors., Civil Appeal (SC) No. 3499 of 2020.
[11] Union of India v. W.N. Chadha, AIR 1993 SC 1082.
[12] Union of India v. W.N. Chadha, AIR 1993 SC 1082.
[13] The Collector v. K. Krishnaveni, Writ Appeal (SC) No. 1995 of 2018.
[14] Union of India v. W.N. Chadha, AIR 1993 SC 1082.
[15] Chairman Mining Board v. Ramjee, 1977 AIR 965 SC.
[16] National Spot Exchange Ltd. v. State of Maharashtra & Ors., 2015 SCC OnLine Bom 6583, ¶ 15; Babusingh Pokarsingh Rajpurohit v. State of Maharashtra & Ors., 2016 SCC OnLine Bom 1484; K.N. Mutyala Rao v. Export Inpection Council of India & Ors., 2010 SCC OnLine Mad 2497.
[17] Balkrishna Ram v. Union of India and Ans., (2020) 2 SCC 442.

se '*efficacious*'. Thus, *ispo facto* the principle of *audi alteram partem* has not been violated in the instant case and the Hon'ble Court may refuse to entertain the instant appeal.

[1.4] THAT THERE HAS BEEN NO LAPSE ON THE PART OF THE HON'BLE HIGH COURT IN MARSHALLING OF EVIDENCE WHICH JUSTIFIES REVIEWING IT IN LARGER INTERESTS OF JUSTICE

It is most humbly submitted that Sec. 482 of the Cr.P.C. states that,

> "*Nothing in this code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this code, or to prevent abuse of the process in any Court or otherwise to secure the ends of justice*."

It is well settled that the inherent jurisdiction of the High Court under Sec. 482 can be exercised to quash proceedings in a proper case either to "*prevent the abuse of process*' of any court or otherwise to secure the "*ends of justice*"[18] but the Hon'ble Supreme Court in the case of ***Inder Mohan Goswami v. State of Uttaranchal***[19] held that,

> "*Inherent powers under Section 482, Cr.P.C. though wide have to be exercised sparingly, carefully, and with great caution and only when such exercise is justified by the tests specifically laid down in the section itself. Authority of Court assists for advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute*."

While reiterating this view in the case of ***State of Telangana v. Habib Abdullah Jeelani***[20] the Apex Court held that the powers under Sec. 482 of Cr.P.C. or under Art. 226 of the Constitution to quash the F.I.R. is to be exercised in a very '*sparing manner*' and it is not to be used to choke or smother the prosecution that is '*legitimate*'. It was further stated in the aforesaid decision that inherent powers do not confer an arbitrary jurisdiction on the High Courts to act according to '*whim or caprice*' and that such power has to be exercised sparingly, with circumspection and in the '*rarest of the rare cases*'. It thus casts an onerous

[18] R.P. Kapur v. State of Punjab, AIR 1960 SC 866; Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors., Crimial Appeal (SC) No. 330/2021
[19] Inder Mohan Goswami v. State of Uttaranchal, AIR 2008 SC 251 at 256.
[20] State of Telangana v. Habib Abdullah Jeelani, (2017) 2 SCC 779.

and more diligent duty on the Court.[21] The appellant has approached the High Court for quashing of F.I.R. under Section 482 of the Cr.P.C. thus in order to testify that there was no lapse on part of the High Court it is crucial to test whether all the essentials for quashing of F.I.R. were sufficed.

[1.4.1] *That the Prosecution is 'Legitimate'*

It was settled in the case of ***State of A.P. v. Golconda Linga Swamy***[22] that the inherent power of the Court should not be exercised to stifle a legitimate prosecution and that exercise of inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive.[23]

It is most humbly submitted that the prosecution against the appellant is completely legitimate as all the ingredients of the offences charged are constituted as is further contended in **[3]**. When *ispo facto* it is explicit that a *prima facie* case is formed and the allegations do form sufficient grounds for issue of process then there stands no legal ground to hold such prosecution as "*illegitimate*".

[1.4.2] *That the instant case does not falls within the ambit of 'Rarest of the rare cases'*

It is most humbly submitted that the inherent powers under Sec. 482 can be exercised only in the "*rarest of the rare cases*". It is thus important to show that the case is of exceptional nature.[24] It is also well settled that a case becomes an '*exceptional case*' when the grounds laid down in the cases of ***State of Haryana v. Bhajan Lal***[25]***, R.P. Kapur v. State of Punjab***[26] *and* ***Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque***[27] are satisfied. The grounds are as follows;

> "*(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;*

[21] Kurukshetra University v. State of Haryana, (1977) 4 SCC 451; Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors., Crimial Appeal (SC) No. 330/2021.
[22] State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522.
[23] State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522.
[24] Resurfacing of Road Agency Private Ltd. v. Central Bureau of Investigation, (2018) 16 SCC 299.
[25] State of Harayana v. Bhajan Lal, 1992 Supp (1) SCC 335.
[26] R.P. Kapur v. State of Punjab, AIR 1960 SC 866.
[27] Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122.

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

It is most humbly submitted that *ispo facto* the allegations put forth against the appellant in the F.I.R. No. _____/2022 do constitute the alleged offences if taken at their face value and at entirety as all the ingredients of the alleged offences are sufficed & direct and sufficient evidence is adduced in support of the allegations as is also contended in **[3]**. It is thus manifest from the facts and circumstances of the case that the instant case falls outside the category of "*rarest of rare cases*".

[1.4.3] *That it will be gross injustice to disallow the 'issue of process'*

It is most humbly submitted that the Apex Court in the case of ***State of Karnataka v. L. Muniswamy***[28] observed that the High Court in its inherent powers is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.[29]

In the aforesaid decision it was further held that where a criminal proceeding initiated pursuant to the F.I.R is nothing but an '*abuse of process of law*' and/or the same is wholly without jurisdiction or where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged or where the allegations in the F.I.R. even if they are taken at the face value and accepted in their entirety, do not constitute the offence alleged and exceptional case being made out on the grounds laid down in the cases of ***Bhajan Lal***[30], ***R.P. Kapur***[31] *and* ***Zandu Pharmaceutical Works Ltd.***[32], by giving brief reasons, the High Court will be justified in quashing the F.I.R.[33]

[28] State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699.
[29] Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors., Crimial Appeal (SC) No. 330/2021
[30] State of Harayana v. Bhajan Lal, 1992 Supp (1) SCC 335.
[31] R.P. Kapur v. State of Punjab, AIR 1960 SC 866.
[32] Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122.
[33] *Id*, ¶ 4.7.

It is most humbly submitted that it will be gross injustice to disallow the issue of process against the appellant since the allegations put forth against the appellant under F.I.R. No. _____/2022 do constitute all the alleged offences even if taken at their face value and at their entirety as all the ingredients of the alleged offences are duly sufficed & direct and sufficient evidence has been adduced in support of the allegations as is also contended in **[3]**. The instant case also does not fall under the category of "*rarest of the rare cases*" **[1.4.2]**. Also, it is likely to promote commission of offence under Sec. 124A by the people who are influenced by the Appellant. It is thus humbly contended that the Hon'ble Court must not disallow the '*issue of process*' under Sec. 204 of Cr.P.C.

[1.4.4] *That the Hon'ble High Court is judicially right in not allowing Appellant's quashing petition under Section 482*

It is most humbly submitted that in the case of ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors.***[34] the Hon'ble Supreme Court observed that High Courts are not allowed to exercise power under Sec. 482 in regard to matters specifically covered by other provisions of the Code. Since, criminal proceedings instituted against an accused person must be tried under the provisions of the Code, the High Court would refrain from interfering with the said proceedings at an interlocutory stage. Thus, the Hon'ble Court carved out some exceptions of the aforesaid rule as follows;

> "*(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.*
>
> *(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.*
>
> *(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support*

[34] *Id.*

> *of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question…*"

It was further affirmed in the case of ***Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque and Ans.***[35] that no hard and fast rule can be laid down for exercise of this extra-ordinary jurisdiction and it is the utter discretion of the Hon'ble High Court to use its powers to impart justice.[36] It is also well settled that the power under Sec. 482 is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Although the Court has authority to advance justice but if any attempt is made to abuse that authority so as to produce injustice, the Court has the power to prevent such abuse. It would be an '*abuse of process*' of the Court to allow any action which would result in injustice and prevent promotion of justice.[37]

It is most humbly submitted that the allegations against the appellant put forth in the F.I.R. No. _____/2022 do constitute all the alleged offences even if taken at their face value and at their entirety as all the ingredients of the alleged offences are duly sufficed in the F.I.R. & direct and sufficient evidence has been adduced in support of the allegations as is also contended in **[3]**. The seditious slogans recited by the appellant on a prime-time show followed by the seditious speech of the appellant made to thousands of people during the hunger strike is sufficient to corroborate the commission of the alleged offence under Sec. 124A of I.P.C. Thus, it is vehemently contended that the Hon'ble Court was justified in not allowing the Appellant's quashing petition under Sec. 482 of Cr.P.C.

[2.] THAT SECTION 124A OF THE INDIAN PENAL CODE IN NOT UNCONSTITUTIONAL

It is most humbly submitted that: *firstly*, Sec. 124A is a "*reasonable restriction*" on the Right to Freedom of Speech and Expression under Art. 19(2) **[2.1]**; and *secondly*, the Sec. 124A is not void under Article 13(2) of the Constitution **[2.2]**. It is therefore most humbly contended that the Sec. 124A is not unconstitutional.

[35] Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque and Ans., (2005) 1 SCC 122.
[36] Janata Dal v. H.S. Chowdary, (1992) 4 SCC 305; Dr. Raghubir Saran v. State of Bihar, AIR 1964 SC 1.
[37] State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522.

[2.1] THAT THE SECTION 124A IS A RESONABLE RESTRICTION ON THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION UNDER ARTICLE 19(2)

It is most humbly submitted that Art. 19(1)(a) *inter alia* safeguards the right to freedom of speech and expression to every citizen of India. However, the aforesaid right is not absolute and "*reasonable restrictions*" may be imposed by "*law*" on the exercise of the right by the State as may be necessary in larger interest of the community.[38] The Hon'ble Court in ***M.R.F. Ltd. v. Inspector Kerela Govt.***[39] held that in examining the reasonableness of a statutory provision, whether it violated any fundamental right under Art XIX, one has to keep in mind: (1) The Directive Principles of State Policy; (2) the Restrictions must not be arbitrary or of an excessive nature, going beyond the requirement of the interest of the general public; (3) no abstract universal pattern should be laid down, it may vary from case to case with regard to the changing conditions, values of human life, social philosophy of the constitution, prevailing conditions and surrounding circumstances; (4) prevailing social values and social needs which are intended to be satisfied by the restrictions; and (5) there must be direct and proximate nexus with the object sought to be achieved.[40]

"*Reasonable*", in law, *prima facie* means reasonable in regards to the circumstances in which the actor is called upon to act reasonably[41]; it also means '*rational*', according to the dictate of reason and not excessive or immoderate; which is not *per se* preposterous or absurd; which favours morality and ethics and it depends on the nature of the right claimed, object to be achieved, means employed and limitation imposed[42]. A reasonable and *bonafide* requirement is something in between '*a mere desire or wish*' on one hand and a '*compelling or dire or absolute necessity*' at the other such need, maybe a present need or within reasonable proximity of future.[43] Whereas, '*Law Arbitrary*' means "*a law not found in the nature of things, but imposed by the legislature's mere will; a bill not immutable*[44]" and "*an action of State uninformed by reason is per se arbitrary*.[45]"

[38] DR. DURGA DAS BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA 112 (LexisNexis Butterworths Wadhwa Nagpur, 2015).
[39] M.R.F. Ltd. v. Inspector Kerela Govt., (1998) 8 S.C.C 227 (¶ 13).
[40] DR. DURGA DAS BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA 115 (LexisNexis Butterworths Wadhwa Nagpur, 2015).
[41] Gujrat Water Supply & Sewage Board v. Unique Erectors (Gujarat) Pvt. Ltd., AIR 1989 SC 973**;** Rena Drego v. Lalchand Soni, (1998) 3S.C.C 341.
[42] M/s Kelvin Cinema v. State of Assam, AIR 1996 Gau 103**;** R.K. Garg v. Union of India, AIR 1981 SC 2138.
[43] Raghunath G. Panhale v. Chaganlal Sundarji and Co., AIR 1999 SC 3864.
[44] Black's Law Dictionary, 890 (7th ed. 1999)
[45] Amman Sugars Ltd. v. CTO, (2005) 1 S.C.C 625 (634).

It is humbly contended that Sec. 124A is read with Art. 38 of the Indian Constitution directs the state to maintain social order within the territory.[46] According to Law Commission's forty-second report the provision was formulated for the purpose of ensuring tranquillity and maintenance of social order which makes it *per se* non-arbitrary.[47] Being one of the "*reasonable restrictions*" under Art. 19(2) it withstands the social philosophy of the Constitution. Also, the penalising the offence of sedition under Sec. 124A is in direct nexus with its object of maintenance of social order. The provision thus qualifies the test of reasonability under Art. 19(2) of the Constitution.

It is further submitted that in the case of ***Kedar Nath v. State***[48] the Supreme Court held that Sec. 124A of the Indian Penal Code does not violate Article 19(1)(a) of the Indian Constitution as it is a reasonable restriction on the freedom of speech and expression in the interest of public order. The Apex Court also observed that the Section and the explanations attached thereto read as a whole made it reasonably clear that the section aims at rendering penal only such activities as would be intended, or have tendency, to create disorder or disturbance of public peace by resorting to violence. Criticism of public measures or comment on government action, however, strongly worded, would be within reasonable limits and consistent with freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency of or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. In the view of above, there should not be any doubt that the section correctly balances the freedom of speech and expression and the interest of public order.

[2.2] THAT THE SECTION 124A IS NOT VOID UNDER ARTICLE 13(2) OF THE CONSTITUTION

It is most humbly submitted that any law or law in force which is not consistent with the fundamental rights enshrined under Part III of the Indian Constitution are void to the extent of their consistency by the virtue of Article 13(2). It is explicit that the foremost pre-requisite for a law or any of its provision to be void is that the law or the provision must violate one or more of fundamental rights enshrined in the Constitution. However, a "*reasonable restriction*" on any fundamental right is ousted from the purview of Article 13(2) so far the restriction stands the test of reasonability. Sec. 124A being a "*reasonable restriction*" on Art. 19(1)(a), as is also elucidated in **[2.1]**, is not inconsistent with any fundamental right under

[46] INDIA CONSTI., art. 38.
[47] Law Commission, Forty-Second Report, p. 146-150.
[48] Kedar Nath v. State, AIR 1962 SC 955.

the Indian Constitution. It is therefore, vehemently contended that Sec. 124A is not unconstitutional or void.

[3.] THAT THE INGREDIENTS OF SECTION 124A ARE SATISFIED IN F.I.R. REGISTERED AS CASE CRIME NO. ____/2022 AGAINST THE APPELLANT

It is most humbly submitted that: *firstly*, the speech made by the appellant during the hunger strike was seditious in nature **[3.1]**; *secondly*, the appellant is not entitled to benefit of doubt in presence of sufficient evidence to corroborate the commission of offence **[3.2]** and *lastly*, no sufficient legal grounds exist for allowing quashing of the FIR No. _____/2022 **[3.3]**. It is therefore contended that the Appellant is liable to be attributed with criminal liability under the

[3.1] THAT THE SLOGANS AND SPEECH MADE BY THE APPELLANT WAS SEDITIOUS IN NATURE

It is most humbly submitted that under Sec. 124A of the I.P.C. any statement, verbal or written, becomes seditious when it brings or likely to bring into hatred or contempt, or excites or is likely to excite disaffection towards, the Government established by law in India.[49] However, comments expressing "*disapprobation*" of policies, measures or actions of Government are ousted from the purview of this provision until it is not likely to promote disaffection or excite hatred against the incumbent government.[50]

In the instant case, the appellant while criticising the incumbent Government recited slogans of "*Goyal tu hai bewafa ab toh dede istifaah*" on a prime time show which is likely to influence a significant quantum of population. Also, on the subsequent day while addressing thousands of people during the hunger strike led by Mr. G.G. Parwani, the appellant, said that:

> "*Mr. Goyal you and your stooges in the Government have destroyed this country. The thousand cuts that you have inflicted on our democracy will not be forgotten. Friends, our is the day to seize and conquer. For, if we remain meek and hidden, this government which has till now obliterated our less privileged will come for you and me. Instead, its time that we get them. Remember what our mentors said, "There are decades when nothing happens; and there are weeks when decades happen." Let this*

[49] The Indian Penal Code, 1860, § 124A, Act No. 45 of 1860, Act of Parliament (India).
[50] *Id*.

be the week of revolution in the country. Let it be the final hurdle before we reclaim this country's pride and honour."

The speech *per se* is likely to excite the feeling of hostility among a significant number of people against the incumbent government which makes it seditious in nature. The intrinsic object of overthrowing the government in his speech is likely to incite people to commit violence and public disorder.[51] It is therefore contended that the appellant has *prima facie* committed an offence of sedition under Sec. 124 A of the I.P.C. as all the essentials pre-requisites of the provision are duly sufficed in the instant case.

[3.2] THAT THE APPELLANT IS NOT ENTITLED TO BENEFIT OF DOUBT IN PRESENCE OF SUFFICIENT EVIDENCE TO CORRBORATE THE COMMISSION OF OFFENCE

It is most humbly submitted that the cardinal principle of criminal jurisprudence is that the guilt of the accused is to be established by the prosecution beyond the possibility of any reasonable doubt. Even if there may be an element of truth against the accused but considered as a whole there is invariably a long distance to travel and whole of distance must be covered by legal, reliable and unimpeachable evidence before an accused can be convicted.[52]

In the instant case there is direct substantial evidence to establish beyond doubt that the accused made seditious remarks about incumbent government which were not merely a criticism of government's policies but outrageous remark intended excite disaffection in the crowd for the government. The element of *mens rea* can be successfully proven by the *mere* statements of the appellant that he made in his speech addressing thousands of people during the hunger strike. He said that "*Friends, ours is the day to seize and conquer*" and that "*Let this be the week of revolution in the country. Let it be the final hurdle before we reclaim this country's pride and honour*". Thus, a complete and conclusive chain of circumstances has been successfully established to prove guilt of the accused persons beyond reasonable doubt. It is therefore humbly contended that the appellant is not entitled to "*benefit of doubt*".

[51] Romesh Thappar v. State, AIR 1950 SC 124; Naurang Singh v. State, 1968 Cr. L.J. 846 (P&H).
[52] Sarwan Singh Rattan Singh v. State of Punjab, AIR 1957 SC 637; Anil W. Singh v. State of Bihar, (2003) 9 SCC 67; Reddy Sampath W. v. State of Andhra Pradesh, (2005) 7 SCC 603; Ramreddy & Rajesh Khanna Reddy v. State of Andhra Pradesh, (2006) 10 SCC 172; Sher Singh alias Partapa v. State of Haryana, 2015 Cr LJ 1118 (SC).

[3.3] THAT NO SUFFICIENT LEGAL GROUNDS EXIST FOR ALLOWING QUASHING OF THE FIR AGAINST THE APPELLANT

It is most humbly submitted that the Hon'ble High Court is justified in quashing the F.I.R. only when the case falls within the ambit of either of the case conditions illustrated in the landmark case of ***State of Haryana v. Bhajan Lal***[53] and when the essentials established in the aforesaid case are duly sufficed. In the aforesaid decision the Court identified the following cases in which F.I.R can be quashed:

> "*102. (1) 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.*
>
> *(2) 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.*
>
> *(3) Where the uncontroverted allegations made in the F.I.R. 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.*
>
> *(4) Where the allegations in the F.I.R. 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.*
>
> *(5) Where the allegations made in the F.I.R. 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.*
>
> *(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or*

[53] State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335, ¶60,61,102,103.

where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceedings 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."

Also, the grounds to justify quashing of criminal proceedings were also laid down in the case of ***Rajiv Thapar v. Madan Lal Kapoor***[54], the High Court is required to undertake step-wise enquiry as mentioned in Para 30 of the decision and if answer to all the questions are in affirmative, the High Court would be justified in quashing the criminal proceedings.[55] Thus, to determine the veracity of a prayer for quashing the F.I.R. raised by the accused by invoking the power vested in the High Court under Sec. 482, the Court must pay regard to the following[56];

"***30.1.*** *Step one: whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?*

30.2. *Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?*

30.3 *Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?*

30.4 *Step four: whether proceeding with the trial court would result in an abuse of process of the court, and would not serve the ends of justice?*"

[54] Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330.
[55] Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors., Crimial Appeal (SC) No. 330/2021; State of U.P. V. Mohammad Naim, AIR 1964 SC 703; State of Andhra Pradesh v. Gourishetty Mahesh, (2010) 11 SCC 226; Vijeta Gajra v. State of NCT Delhi, (2010) 11 SCC 618; State of Maharashtra v. Sanjay Dalmia, (2015) 17 SCC 539; Amish Devgan v. Union of India, (2021) 1 SCC 1.
[56] Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330.

If the answer to all the aforesaid steps is in the affirmative then the High Court will be justified in exercising its powers under Sec. 482 for quashing the F.I.R. registered against the accused.[57] It was held in the case of ***Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque and Ans.***[58] if there is no material to show that the complaint is *mala fide*, frivolous or vexatious and if appears that the ingredients of the offence or offences are disclosed then the proceedings cannot be quashed.

Furthermore, in the case of ***State of A.P. v. Golconda Linga Swamy***[59] it was held that,

> *"It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings."*

It is appositely remarked by the Supreme Court that F.I.R. is not an encyclopaedia, which must disclose all facts and details relating to the offence reported.[60] Thus, the Court cannot embark upon an enquiry as to the reliability or genuineness of the allegations made in the F.I.R. while examining an F.I.R. which is sought to be quashed.[61]

It is further submitted that as per Black's Law Dictionary a case is said to be a '*prima facie* case' when the case is "*established by sufficient evidence and can be overthrown only by rebutting evidence adduced on the other side*".[62] It is also well settled that a case becomes a *prima facie* case when all the ingredients of the alleged offence are sufficed.[63] If all the essential ingredients are satisfied then '*sufficient ground*' for proceedings is made out.[64] To this it is most humbly contended that the F.I.R No. _____/2022 filed against the appellant does *prima facie* constitutes a cognizable offence of sedition under Sec. 124A of the I.P.C. as all the essentials pre-requisite to attribute the criminal liability under the aforesaid provision are duly sufficed **[3.1]**. Thus, there exist sufficient legal grounds to continue the prosecution against the appellant.

[57] Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330.
[58] Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque and Ans., (2005) 1 SCC 122.
[59] State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522, ¶ 8.
[60] Supt. Of Police, CBI v. Tapan Kumar Singh, (2003) 6 SCC 175; State of U.P. v. Naresh, (2011) 4 SCC 324.
[61] King Emproor v. Khwaja Nazir Ahmed, AIR 1945 PC 18.
[62] HENRY CAMPBELL BLACK, BLACK'S LAW DICTIONARY 1353 (1968, West Publishing Co.)
[63] Sunil Bharti Mittal v. Central Bureau of Investigation, AIR 2015 SC 923.
[64] Sunil Bharti Mittal v. Central Bureau of Investigation, AIR 2015 SC 923.

PRAYER

Wherefore in the light of the issues raised, arguments advanced and authorities cited, this Hon'ble Court may graciously be pleased to adjudge and declare that:

1. That the criminal appeal is not maintainable before the Hon'ble Court.
2. That Section 124A of the Indian Penal Code, 1860 is constitutional.
3. That the F.I.R. Registered as Case Crime Number _____/2022 against the Appellant is not liable to be quashed and there exist sufficient legal grounds to continue the prosecution against the appellant.
4. That the essentials of Section 124A of the Indian Penal Code, 1860 are satisfied in F.I.R. Registered as Case Crime Number ____/2022 and the Appellant is liable to be attributed with criminal liability under the aforesaid provision.

And pass any other order or relief in favour of the Respondent in the large interest of justice.

All of which is respectfully submitted

Sd/-

Counsels on behalf of Respondents