THE HIGH COURT OF SIKKIM: GANGTOK

(Criminal Jurisdiction)

CNR No: SKHC01-000025-2026

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Crl. M.C. No. 01 of 2026

1. Shri Bikram Rai *alias* Bikramadi Rai,
S/o Krishna Rai,
Aged 42 years,
Resident of Newer Balasen Tea Estate,
Sonada, Darjeeling,
West Bengal – 734203.

2. Shri Subash Mani Singh,
Son of Shri Mani Kumar Singh,
Aged 49 years,
Resident of Relli Road near Mani Garage,
District Kalimpong, West Bengal.

….. Petitioners

Versus

State of Sikkim.

….. Respondent

Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

{Quashing of FIR No. 80 of 2025 lodged against the petitioners at Sadar Police Station at Gangtok, charge-sheet no.183/SHO/SPS and consequential proceeding before the Sessions Judge, Special Division-I, Gangtok, Sikkim}

Appearance:

Mr. N. Rai, Senior Advocate with Ms. Tara Devi Chettri, Ms. Niyashi Rai and Ms. Sohitya Kala Limboo, Advocates for the Petitioners.

Mr. Yadev Sharma, Additional Public Prosecutor for the Respondent.

With

Crl. M.C. No.07 of 2026

CNR No.: SKHC01-000069-2026

Noel Sharma
S/o Siddhi Prasad Sharma
Aged about 39 years
Permanent Resident of Daramdin,

Lungchok, Soreng, Sikkim,
At present residing at Lingding,
Gangtok, 737102.

….. Petitioner

Versus

State of Sikkim

….. Respondent

Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

{Quashing of FIR No. 80 of 2025 lodged against the petitioners at Sadar Police Station at Gangtok and consequential charge-sheet no.183/SHO/SPS and proceeding before the Sessions Judge, Special Division-I, Gangtok, Sikkim}

Appearance:

Mr. Abhinav Kant Jha, Advocate for the Petitioner (through V.C.).

Mr. Yadev Sharma, Additional Public Prosecutor for the Respondent.

Date of Hearing	:	06.11.2026
Date of Judgment	:	06.11.2026
Date on which uploaded	:	07.11.2026

J U D G M E N T (ORAL)

Bhaskar Raj Pradhan, J.

For brevity the facts of the cases have been culled out herein below:

1. An invitation by "Gorkha Seva Sena" based in Darjeeling, West Bengal to join them in commemorating "a historic milestone and participating in a vital civic dialogue" on the "50th Sikkim State Day Celebration and Constitutional Consultation" to participate in

the spirit of justice, unity and constitutional duty on Sunday 15th June, at Town Hall, Naya Bazar, Kurseong led to the filing of a First Information Report (FIR) dated 06.06.2025 by the Principal Secretary to the Hon'ble Chief Minister against Noel Sharma, Bikramadi Rai and Subash Mani Singh.

The First Information Report

2. The FIR against the petitioners alleged "serious offences" committed by them against the State and the public at large. It was alleged:

> **"***All of whom are associated with an organization named Gorkha Seva Sena, based in Darjeeling, West Bengal.*
>
> *The above-mentioned individuals have, without any lawful authority, permission, or approval, illegally used the official logo and theme of the Government of Sikkim in an invitation card issued by their organization for an event proposed to be held on the subject: "Constitutional Legality of Darjeeling-Sikkim Unification."*
>
> *This is to bring to your kind notice that the official logo and theme of the Government of Sikkim, commemorating 50 years of Sikkim's Statehood, was officially notified by the State Government through Notification No. 75/Home/2024, dated 24.09.2024. The use of the commemorative logo and there is strictly for official purposes by Government of Sikkim departments, agencies, and instrumentalities, and prohibits private or unauthorized use.*
>
> *The illegal reproduction and use of this emblem and theme in materials promoting an extremely sensitive and potentially inflammatory topic—such as the supposed constitutional unification of Darjeeling and Sikkim—has grave implications. It not only misleads the public into believing that the Government of Sikkim is associated with or endorses the organization and its agenda, but also has the potential to provoke enmity between communities (people of*

Sikkim and Darjeeling), disrupt public order, create law and order issue and undermine faith in the integrity and neutrality of the State Government.

Their conduct constitutes a criminal conspiracy and is in clear violation of the following provisions of the Bharatiya Nyaya Sanhita, 2023 (BNS):
Section 152: Acts endangering sovereignty, unity and integrity of India.

Section 196: Promotion of enmity between groups which may lead to disruption of public tranquillity.

Section 336: Forgery for the purpose of harming reputation or misleading the public.

Additionally, the act is punishable under the Emblems and Names (Prevention of Improper Use) Act, 1950, specifically Section 3, which bars the use of government insignia and names for unauthorized purposes.

I firmly believe that this illegal act has been committed with the deliberate intent to mislead the public regarding the State Government's stand, provoke disharmony and confusion on a highly sensitive issue, and exploit a government symbol to falsely lend legitimacy to a politically motivated narrative.

Given the seriousness of the matter, I request you to register an FIR immediately and initiate prompt investigation and prosecution against Mr. Noel Sharma, Mr. Bikramadi Rai, and Mr. Subash Mani Singh, in accordance with the above-cited provisions of the Bharatiya Nyaya Sanhita, 2023, and other applicable laws.

……..”

3. Pursuant to the registration of the FIR under sections 152, 196 and 336 of the Bharatiya Nyaya Sanhita, 2023 (the BNS), a charge-sheet has been filed by the prosecution. The charge-sheet

indicts all the three above named persons and charges them under sections 152, 196(1), 336(4), and 61 (2) of the BNS.

Inherent powers of the High Court under Section 528, BNSS, 2023

4. Bikramadi Rai, Subash Mani Singh and Noel Sharma have preferred the present petitions seeking to invoke the inherent powers of this Court under section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (the BNSS) for quashing the FIR No. 80/2025 dated 06.06.2025 lodged at Sadar Police Station, Gangtok and charge-sheet No.183/SHO/SPS dated 01.09.2025 as well as the proceedings of Sessions Trial Case No.10/2025 pending before the Court of the learned Sessions Judge, Special Division-I, Gangtok, Sikkim.

5. The parameters and contours of section 528 of the BNSS, 2023 have been well explained in several judgments of the Supreme Court. The provision saves the inherent powers of this Court by providing **"***nothing in this Sanhita 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 Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.***"**

6. While examining the corresponding law by the Supreme Court i.e. section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) the Supreme Court in ***State of Haryana & Ors***. vs.

Bhajan Lal & Ors.[1] has after elaborate discussions on the provision and the various judgments passed by the Supreme Court summarized categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice, though it may not may be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

> ***"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 FIR 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 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.*
>
> *(4) 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.*
>
> *(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent*

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[1] 1992 Supp (1) SCC 335

> *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 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.*
>
> *(7) Where a criminal proceeding is manifestly attended with mala fide 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.”*

7. The Supreme Court thereafter gave a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that to in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

8. A decade earlier the Supreme Court in ***State of West Bengal & Ors.*** vs ***Swapan Kumar Guha & Ors***.[2] opined that:

> *“**21.** The position which emerges from these decisions and the other decisions which are discussed by brother A.N. Sen is that the*

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[2] (1982) 1 SCC 561

> *condition precedent to the commencement of investigation under Section 157 of the Code is that the FIR must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under Section 157 of the Code. Their right of enquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in Khwaja Nazir Ahmad [AIR 1945 PC 18 : (1944) 71 IA 203 : 217 IC 1] will apply. The court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the FIR does not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or received.***"***

9. While the learned Senior Counsel representing the petitioners submits that the present case squarely falls within the exception carved out by ***Bhajan Lall*** (supra) the learned Additional Public Prosecutor submit that none of the exceptions would assist the petitioners to dislodge the FIR and the criminal investigation.

10. The learned Senior Counsel submits that the petitioners are protected by the Constitution itself and they have liberty of thought and expression conferred by Article 19(1)(a) of the Constitution of India, 1950. It is submitted that free expression of thoughts and views by individuals or group of individuals is an integral part of a healthy civilized society and without freedom of expression of thoughts and views, it is impossible to lead a dignified life given by Article 21 of the Constitution. It is submitted that in a healthy democracy, the views, opinions or thoughts expressed by individual

or group of individuals must be countered by expressing another point of view, even if a large number of persons dislike the views expressed by another. The right of a person to express their views must be respected and protected.

11. To support his contention the learned Senior Counsel relies upon ***Imran Pratapgadhi*** vs. ***State of Gujarat & Anr***.[3] and relies upon paragraph 53 thereof which is quoted herein verbatim.

> ***53.1.*** *Sub-section (3) of Section 173 BNSS makes a significant departure from Section 154CrPC. It provides that when information relating to the commission of a cognizable offence which is made punishable for 3 years or more but less than 7 years is received by an officer in charge of a police station, with the prior permission of a superior officer as mentioned therein, the police officer is empowered to conduct a preliminary inquiry to ascertain whether there exists a prima facie case for proceeding in the matter. However, under Section 154CrPC, as held in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , only a limited preliminary inquiry is permissible to ascertain whether the information received discloses a cognizable offence. Moreover, a preliminary inquiry can be made under CrPC only if the information does not disclose the commission of a cognizable offence but indicates the necessity for an inquiry. Sub-section (3) of Section 173 BNSS is an exception to sub-section (1) of Section 173. In the category of cases covered by sub-section (3), a police officer is empowered to make a preliminary inquiry to ascertain whether a prima facie case is made out for proceeding in the matter even if the information received discloses commission of any cognizable offence.*
>
> ***53.2.*** *Under sub-section (3) of Section 173 BNSS, after holding a preliminary inquiry, if the officer comes to a conclusion that a prima facie case exists to proceed, he should immediately register an FIR and proceed to investigate. But, if he is of the view that a prima facie case is not made out to proceed, he should immediately inform the first informant-complainant so that he can avail a remedy under sub-section (4) of Section 173.*

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[3] (2026) 1 SCC 721

53.3. *In case of the offence punishable under Section 196 BNS to decide whether the words, either spoken or written or by sign or by visible representations or through electronic communication or otherwise, lead to the consequences provided in the section, the police officer to whom information is furnished will have to read or hear the words written or spoken, and by taking the same as correct, decide whether an offence under Section 196 is made out. Reading of written words, or hearing spoken words will be necessary to determine whether the contents make out a case of the commission of a cognizable offence. The same is the case with offences punishable under Sections 197, 299 and 302 BNS. Therefore, to ascertain whether the information received by an officer in charge of the police station makes out a cognizable offence, the officer must consider the meaning of the spoken or written words. This act on the part of the police officer will not amount to making a preliminary inquiry which is not permissible under sub-section (1) of Section 173.*

53.4. *The police officers must abide by the Constitution and respect its ideals. The philosophy of the Constitution and its ideals can be found in the Preamble itself. The Preamble lays down that the people of India have solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure all its citizens liberty of thought, expression, belief, faith and worship. Therefore, liberty of thought and expression is one of the ideals of our Constitution. Article 19(1)(a) confers a fundamental right on all citizens to freedom of speech and expression. The police machinery is a part of the State within the meaning of Article 12 of the Constitution. Moreover, the police officers being citizens, are bound to abide by the Constitution. They are bound to honour and uphold freedom of speech and expression conferred on all citizens.*

53.5. *Clause (2) of Article 19 of the Constitution carves out an exception to the fundamental right guaranteed under sub-clause (a) of clause (1) of Article 19. If there is a law covered by clause (2), its operation remains unaffected by sub-clause (a) of clause (1). We must remember that laws covered by clause (2) are protected by way of an exception provided they impose a reasonable restriction. Therefore, when an allegation is of the commission of an offence covered by the law referred to in clause (2) of Article 19, if sub-section (3) of Section 173 is applicable, it is always appropriate to conduct a preliminary inquiry to ascertain whether a prima facie case is made out to proceed against the accused. This will ensure that the fundamental rights guaranteed under sub-clause (a) of clause (1) of Article 19 remain protected. Therefore, in such cases, the*

higher police officer referred to in sub-section (3) of Section 173 must normally grant permission to the police officer to conduct a preliminary inquiry.

53.6. *When an offence punishable under Section 196 BNS is alleged, the effect of the spoken or written words will have to be considered based on standards of reasonable, strong-minded, firm and courageous individuals and not based on the standards of people with weak and oscillating minds. The effect of the spoken or written words cannot be judged on the basis of the standards of people who always have a sense of insecurity or of those who always perceive criticism as a threat to their power or position.*

53.7. *There is no absolute rule that when the investigation is at a nascent stage, the High Court cannot exercise its jurisdiction to quash an offence by exercising its jurisdiction under Article 226 of the Constitution of India or under Section 482CrPC equivalent to Section 528 BNSS. When the High Court, in the given case, finds that no offence was made out on the face of it, to prevent abuse of the process of law, it can always interfere even though the investigation is at the nascent stage. It all depends on the facts and circumstances of each case as well as the nature of the offence. There is no such blanket rule putting an embargo on the powers of the High Court to quash FIR only on the ground that the investigation was at a nascent stage.*

53.8. *Free expression of thoughts and views by individuals or group of individuals is an integral part of a healthy civilised society. Without freedom of expression of thoughts and views, it is impossible to lead a dignified life guaranteed by Article 21 of the Constitution. In a healthy democracy, the views, opinions or thoughts expressed by an individual or group of individuals must be countered by expressing another point of view. Even if a large number of persons dislike the views expressed by another, the right of the person to express the views must be respected and protected. Literature including poetry, dramas, films, stage shows including stand-up comedy, satire and art, make the lives of human beings more meaningful. The Courts are duty-bound to uphold and enforce fundamental rights guaranteed under the Constitution of India. Sometimes, we, the Judges, may not like spoken or written words. But, still, it is our duty to uphold the fundamental right under Article 19(1)(a). We Judges are under an obligation to uphold the Constitution and respect its ideals. If the police or executive fail to honour and protect the fundamental rights guaranteed under Article 19(1)(a) of the*

> *Constitution, it is the duty of the Courts to step in and protect the fundamental rights. There is no other institution which can uphold the fundamental rights of the citizens.*
>
> ***53.9.*** *75 years into our republic, we cannot be seen to be so shaky on our fundamentals that mere recital of a poem or for that matter, any form of art or entertainment, such as, stand-up comedy, can be alleged to lead to animosity or hatred amongst different communities. Subscribing to such a view would stifle all legitimate expressions of view in the public domain which is so fundamental to a free society."*
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> ***[Emphasis supplied]***

12. Therefore, the fundamental and only question that seems to arise in this proceeding is whether the invitation by the "Gorkha Seva Sena" under the name of Noel Sharma, Bikramadi Rai and Subash Mani Singh-the petitioners in Crl. M.C. No. 01 of 2026 and Crl. M.C. No. 07 of 2026, to join them for commemorating a historic milestone of "50th Sikkim State Day Celebration and Constitutional Consultation by participating in a vital civic dialogue on the constitutional legality of the Darjeeling-Sikkim Unification" would draw the rigors of the provisions of the BNS charged against the petitioners?

13. While this is the sole question that seems to arise in the present case there is an additional fact whose attention has been drawn by the learned Additional Public Prosecutor of the use of the official logo of the Government of Sikkim in the printed invitation. It is alleged that the illegal reproduction and the use of the official logo in materials promoting an extremely sensitive and potentially inflammatory topic such as the supposed constitutional unification of Darjeeling and Sikkim has grave implications.

Consideration

14. In ***Imran Pratap Gadi*** (supra) the issue revolved around a poem recited in the background of a video clip. The video clip was posted on social media by the appellant therein. The text of the poem had been reproduced in the judgment and it reads thus:

> **"2. .....**
> "*13. …* 'ए खून (blood) के प्यासो (thirsty) बात सुनो
> गर हक्क (truth) की लडाई जुल्म
> (excesses/injustice) सही
> हम जुल्म (excesses/injustice) से इश्क
> (love) निभा देंगे
> गर शम–ए – गिरिया (melting of a candle
> which resembles tears)
> आतिश (flame) है
> हर राह वो शम्मा (light) जला देंगे
> गर लाश हमारे अपनोंकी खतरा है तुम्हारी मसनद
> (throne) का उस रब (God) की कसम हस्ते हस्ते
> कितनी लाशें दफना देंगे
> ए खूनके प्यासों बात सुनो' "

15. The appellant therein was a Member of the Rajya Sabha. The FIR alleged that on the occasion of the birthday of one Altaf Ghafarbhai Khafi, a Member of the Municipal Corporation of Jamnagar a mass wedding programme was held at Sanjari Education and Charitable Trust. The said Municipal Councilor invited the appellant to the function. A video of the event was made. The appellant posted the video on the social media platform 'X' from his verified account. The video had the recitation of the poem reproduced above in the background. The allegation in the complaint was that the spoken words of the poem incite people of one community against another, and it hurts a community's

religious and social sentiments. It was alleged that the song had lyrics that incited people of other communities to fight for the community's rights. It was alleged that the video posted by the appellant created enmity between two communities at the national level and hatred towards each other. It was further alleged that it had a detrimental effect on national unity.

16. The appellants filed a petition under section 528 of the BNSS read with Article 226 of the Constitution of India, praying for quashing the said FIR. The learned Single Judge rejected the petition by holding that as the investigation is at a very nascent stage, interference cannot be made in view of the decision of the Supreme Court in ***Neeharika Infrastructure (P) Ltd.*** vs. ***State of Maharashtra***[4]. The matter thus travelled to the Supreme Court. The Supreme Court examined the poem and concluded that the poem had nothing to do with any religion, community, region or race. That by no stretch of imagination, the contents affect national integration; that it did not jeopardize the sovereignty, unity, integrity or security of India; that it suggested that while fighting to secure our rights if we are met with injustice, we will face it with law; that we will use our tears as flames to light up all paths; that it gives a warning to the throne (the rulers). It states that if the bodies of our loved ones are a threat to the rulers, we will bury our loved ones happily; that it preaches non-violence. It says that if the fight for our rights is met with injustice, we will

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[4] (2021) 19 SCC 401

meet injustice with love. This gives a message that injustice should not be retaliated, but it should be met with love.

17. The Supreme Court thereafter examined whether any offence was made out. It examined the FIR as well as the provision of section 196 of BNS which is the only provision the learned Additional Public Prosecutor submits is attracted in the present case conceding that the prosecution lack material insofar as sections 152, 336(4) and 61(2) of the BNS are concerned.

18. The Supreme Court opined:

> ***"15.*** *The offence under Section 196 is attracted when the words, either spoken or written, or by signs or visible representations, promote enmity between different groups, on the grounds of religion, race, place of birth, residence, language, caste or, community or any other ground. The offence will be attracted when the words either spoken or written, or signs or visible representation, promote or attempt to promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. On a plain reading of the poem, we find that the same has nothing to do with any religion, caste, community or any particular group. The poem's words do not bring about or promote disharmony or feelings of hatred or ill-will. It only seeks to challenge the injustice made by the ruler. It is impossible to say that the words used by the appellant disturb or are likely to disturb public tranquillity. Therefore, neither clause (a) nor clause (b) of Section 196(1) are attracted. There is no allegation against the appellant of organising any exercise, movement, drill or similar activity. There is no allegation against the appellant that he uttered the words in any place of worship or in any assembly engaged in the*

> *performance of religious worship or religious ceremonies. Hence, clause (c) will have no application. The appellant has put a video of a mass marriage function, and in the background, the words are uttered. Therefore, Section 196 can have no application**."***

19. With a clear understanding of the provision of section 196 and as explained by the Supreme Court if we were to revisit the offending written invitation by the Gorkha Seva Sena as well as the FIR, it is clear that the petitioners under the aegis of "Gorkha Seva Sena" had sought for and invited people's participation for public consultation on the theme, "Constitutional Legality of Darjeeling-Sikkim Unification".

20. History reveals that the constitutional provisions have been tested time and again in the Indian context over the last 76 years and each time it has withstood any aberrations. Debates and deliberations during a public consultation seeking views of constitutional legality of what one group of people perceive may be the right course of action, as opposed to the contrary view of another group regarding the alleged proposed Darjeeling-Sikkim Unification, ought not to provoke such extreme sentiments as to attract the mischief of section 196 BNS. A contrary view, which may be clearer, better reasoned and legally sound, may be more persuasive. In the words of the Supreme Court *"In a healthy democracy, the views, opinions or thoughts expressed by an individual or group of individuals must be countered by expressing another point of view. Even if a large number of persons dislike the*

views expressed by another, the right of the person to express the views must be respected and protected." Further borrowing the words of the Supreme Court *"When an offence punishable under Section 196 BNS is alleged, the effect of the spoken or written words will have to be considered based on standards of reasonable, strong-minded, firm and courageous individuals and not based on the standards of people with weak and oscillating minds. The effect of the spoken or written words cannot be judged on the basis of the standards of people who always have a sense of insecurity or of those who always perceive criticism as a threat to their power or position."* Therefore, an invitation, by itself, for a public consultation for constitutional legality of Darjeeling and Sikkim Unification would not attract the provision of section 196 of BNS.

21. So, the next question on the facts of the case is the use of the emblem of the Government of Sikkim in the invitation by the Gorkha Seva Sena, Darjeeling about the words "50th Sikkim State Day Celebration and Constitutional Consultation" and whether that would lead to an inference that the petitioners were indulging in activities which draw them back into the mischief of section 196 of BNS.

22. Prima facie it seems to me quite clearly, mischievous. The petitioners ought not to have used the official logo without the expressed sanction of the Government of Sikkim. The illegal use of the official logo may invite the petitioners for other consequences. However, it is quite evident that even such use of the official logo

would not draw the case back to the provision of section 196 of BNS, which is essentially for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language etc. and doing acts prejudicial to maintenance of harmony.

23. As pointed out by the Supreme Court it is for each one of us including the police officers to abide by the Constitution and respect its ideals. The philosophy of the Constitution and its ideals can be found in the Preamble itself. The Preamble lays down that the people of India have solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure all its citizens liberty of thought, expression, belief, faith and worship. I am therefore of the opinion that this is a fit case that I should exercise the power under section 528 of the BNSS and quash the FIR, the charge-sheet as well as the criminal proceeding against the petitioner pending before the learned District and Sessions Judge, Special Division-I Gangtok, for the ends of justice, with a direction that the petitioners shall not indulge in such mischievous activities detrimental to the interest of the society by misusing others property and representing it as was sought to be done in the written invitation. The respondent is free to take appropriate action for any illegality committed by the petitioners for the use of the emblem as advised.

24. Accordingly, the Crl. M.C. No. 1 of 2026 and Crl. M.C. No. 7 of 2026 stands disposed of along with the pending interlocutory application.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting: **Yes**

to/