



IN THE HIGH COURT OF KARNATAKA, KALABURAGI BENCH

DATED THIS THE 14TH DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

CRIMINAL PETITION NO.200126 OF 2020

BETWEEN:

1. ALLAUDDIN, S/O SYED PASHA HUSSAINI ,

2. ABDUL KHALEQ S/O ABDUL RAZAK,
AGE: 39 YEARS,
OCC: MANAGEMENT PERSON OF
SHAHEEN SCHOOL, BIDAR,
R/O H.NO.4-1-93, NOORKHAN TALEEM,
BIDAR - 585 401.

3. MOHD. BILAL INAMDAR



4. MOHD. MEHATAB, S/O MOHD. ABDUL KAREEM,

...PETITIONERS

(BY SRI AMEET KUMAR DESHPANDE, SENIOR COUNSEL FOR
SRI GANESH S. KALBURGI, SRI DESHPANDE G.V. AND
SRI ANANTH S. JAHAGIRDAR, ADVOCATES)



AND:

1. THE STATE OF KARNATAKA,
THROUGH THE P.S.I.,
NEW TOWN POLICE STATION,
BIDAR TOWN, BIDAR-585 401.
(REPRESENTED THROUGH H.C.G.P.,
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH)
2. SRI. NEELESH RAKSHYAL,

...RESPONDENTS

(BY SRI GURURAJ V. HASILKAR, HCGP FOR R1,
SRI SACHIN M. MAHAJAN, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S.482 OF CR.P.C. BY THE
ADVOCATE FOR THE PETITIONER, PRAYING TO ALLOW THIS
PETITION AND TO QUASH THE FIR IN CRIME NO.10/2020 AND
ALL FURTHER ACTIONS PURSUANT TO THE FIR REGISTERED IN
CRIME NO.10/2020 OF THE NEW TOWN POLICE STATION,
BIDAR CIRCLE, BIDAR SO FAR AS THE ACCUSED NOS.1 & 2
PETITIONERS HEREIN ARE CONCERNED FOR THE ALLEGED
OFFENCES PUNISHABLE UNDER SECTIONS 504, 505(2) 124A,
153A AND 34 OF IPC AND TO PASS ANY OTHER APPROPRIATE
ORDERS AS MAY BE NECESSARY, TILL THE FINAL DISPOSAL
OF THIS PETITION.

THIS PETITION COMING ON FOR DICTATING ORDERS,
THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

1. Respondent No.2 herein lodged the First Information Report alleging that, he is a social worker and the Head of the Shaheen Education Society and the management of the School have used the minor children of the school to utter words that create the feelings against the nation and used abusive words against the Hon'ble Prime Minister of the country, and thereafter, have made to utter that, if the parliament enacted C.A.A., N.P.R. and N.R.C. are enforced, Muslims will have to leave the country. Such statements are uttered by the children in the form of a school play/drama exhibited in the Shaheen Society's Shaheen School and the same was uploaded by Mohammad Yusuf Rahim in his Facebook account and thereby created a fearsome atmosphere and created an atmosphere that hurts the religious sentiments.

2. The police registered the FIR for the offences punishable under Sections 504, 505(2), 124A, 153A R/w Section 34 of IPC. The registration of the FIR is impugned in this petition.

3. Sri Ameet Kumar Deshpande, learned Senior Counsel for the learned counsel for the petitioners would submit that criticizing the policy of the government and its functionary would not constitute an offence under Section 124A in the absence of any material that the petitioner - accused herein incited the people to resort to violence against the government or with an intention to create public disorder. He



further submits that there is no allegation in the FIR that the petitioner - accused promoted or attempted to promote enmity between different groups on grounds of religions. Hence, in the absence of essential ingredients to constitute the commission of offences alleged against the petitioners, the registration of FIR is without any substance. In support, he places reliance on the judgment of the Hon'ble Supreme Court in the case of Vinod Dua v. Union of India, [2021 SCC OnLine SC 414].

4. On the other hand, learned counsel for respondent No.2 would submit that the allegations made in the FIR discloses the commission of the aforesaid offences alleged against the petitioners herein and the veracity of the allegations required to be investigated and at this stage, the registration of the FIR does not warrant any interference. He further submits that the FIR impugned herein was challenged before the Hon'ble Supreme Court in a Public Interest Litigation and the said PIL was dismissed.

5. Learned High Court Government Pleader for respondent No.1-State would reiterate the submissions made by the learned counsel for respondent No.2.

6. Considered the submissions made by the learned counsel for the parties.

7. The Hon'ble Supreme Court, in the case of Kedar Nath Singh v. State of Bihar, [1962 Supp (2) SCR 769] at para-24 has held as follows:



"24. XXX

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



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

8. The Hon'ble Supreme Court, in the case of Vinod Dua supra at para-68 and 69 has held as follows:

"68. *The Principles culled out in paragraph 33 hereinabove from the decision of Court in Kedar Nath Singh show that a citizen has a right to criticize or comment upon the measures undertaken by the Government and its functionaries, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder; and that it is only when the words or expressions have pernicious tendency or intention of creating public disorder or disturbance of law and order that Sections 124A and 505 of the IPC must step in.*

69. *In our view, the statements by the petitioner as mentioned hereinabove, if read in the light of the principles emanating from the decision in Kedar Nath Singh and against the backdrop of the circumstances when they were made, can at best be termed as expression of disapprobation of actions of the Government and its functionaries so that prevailing situation could be addressed quickly and efficiently. They were certainly not made with the intent to incite people or showed tendency to create disorder or disturbance of public peace by resort to violence. The petitioner was within the permissible limits laid down in the decision of this Court in Kedar Nath Singh. It may be that certain factual details in the 3rd statement regarding the date when the ban came into effect were not completely correct. However, considering the drift of the entire talk show and all the statements put together it cannot be said that the petitioner crossed the limits set out in the decision of this Court in Kedar Nath Singh.*



9. The bare reading of Section 124A of IPC and the decisions of the Hon'ble Supreme Court in the aforesaid cases would indicate that, a citizen has a right to criticize or comment upon the measures undertaken by the Government and its functionaries, so long as he does not incite people to resort to violence against the Government established by law or with the intention of creating public disorder, and that it is only when the words or expressions have pernicious tendency or intention of creating public disorder or disturbance of law and order that Section 124-A can be invoked. In other words, to constitute the offence punishable under Section 124-A of IPC, there must be an attempt to bring hatred or contempt, or attempts to excite disaffection towards the government established by law in India by inciting people to resort to violence and creating public disorder.

10. Admittedly, the petitioner No.1 is the head of Shaheen's school, the petitioner Nos.2 to 4 are the members of the Board of Management of the School. It is alleged that they enacted a play/drama through the minor children of the school criticizing the various enactments of the government and if such enactments are enforced, the Muslims may have to leave the country. Further, the children were made to utter words abusing the Hon'ble Prime Minister of the country. The play/drama was enacted within the school premises. There are no words uttered by the children inciting people to resort to violence or to create public disorder.



11. The play enacted by the petitioners was also not within the knowledge of the general public at large and it was made known to the public at large only when the other accused uploaded the play on his Facebook account. Hence, at no stretch of imagination it can be said that the petitioners herein enacted the play with an intention to incite people to resort to violence against the government or with an intention of creating public disorder. Hence, in my considered view, the registration of the FIR for the offence under Section 124-A and Section 505(2) in the absence of essential ingredients is impermissible.

12. The utterance of the abusive words that the Prime Minister should be hit with footwear is not only derogatory, but is irresponsible. The constructive criticism of the government policy is permissible, but the constitutional functionaries cannot be insulted for having taken a policy decision, for which, certain section of the people may have objection.

13. To constitute an offence punishable under Section 153A of IPC, there must be an intention to promote enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial for maintenance of harmony. In the instant case, there is no allegation that the accused herein either promoted enmity or hatred towards another religious community. In the absence of essential ingredients so as to constitute an offence punishable under Section 153A of IPC, the registration of FIR is arbitrary.



14. The school is supposed to impart education and encourage learning among young minds. The school is the foremost fountain of knowledge children are exposed to and it gives them an opportunity to acquire knowledge on various fields of education and this contributes to cultivation in the thought process. Dramatization of the topics which are appealing and creative in developing a child's interest in academics is preferable, and hovering over current political issues imprints or corrupts young minds. They should be fed with knowledge, technology, etc, which benefits them in their upcoming curriculum of academic period. Therefore the schools have to channelize the river of knowledge towards children for their welfare and betterment of society and not indulge in teaching the children to criticize the policies of the government, and also insult the constitutional functionaries for having taken particular policy decision which is not within the framework of imparting education.

15. In view of the aforesaid discussion, the continuation of the investigation will be an abuse of process of law. Accordingly, I pass the following:

ORDER

- i. Criminal petition is allowed.
- ii. The impugned FIR in Crime No.14/2020 registered by the Gandhi Gunj Police Station, Bidar, for the offences punishable under Sections 504, 505(2), 124A, 153A R/w



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Section 34 of IPC insofar as it relates to the petitioners herein is hereby quashed.

Sd/-
JUDGE

LG,^{BKM}
List No.: 1 SI No.: 24